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LABELING AND REGISTRATION OF ECONOMIC POISONS

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HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON

AGRICULTURE AND FORESTRY

UNITED STATES SENATE

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1605

A BILL TO AMEND THE FEDERAL INSECTICIDE, FUNGICIDE,
AND RODENTICIDE ACT, AS AMENDED, TO PROVIDE FOR
LABELING OF ECONOMIC POISONS WITH REGISTRATION
NUMBERS, TO ELIMINATE REGISTRATION UNDER PROTEST,
AND FOR OTHER PURPOSES

SEPTEMBER 10, 1963

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CHAPTER 1

THEORY

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2. The second part of the chapter discusses the basic concepts of the theory of the market.

3. The third part of the chapter discusses the basic concepts of the theory of the economy.

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5. The fifth part of the chapter discusses the basic concepts of the theory of the society.

6. The sixth part of the chapter discusses the basic concepts of the theory of the world.

7. The seventh part of the chapter discusses the basic concepts of the theory of the universe.

8. The eighth part of the chapter discusses the basic concepts of the theory of the cosmos.

9. The ninth part of the chapter discusses the basic concepts of the theory of the multiverse.

10. The tenth part of the chapter discusses the basic concepts of the theory of the omniverse.

LABELING AND REGISTRATION OF ECONOMIC POISONS

TUESDAY, SEPTEMBER 10, 1963

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION OF THE
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan (chairman of the subcommittee) presiding.

Present: Senators Jordan and Neuberger.

Senator JORDAN. The hearing will come to order, please.

We are here this morning to have a hearing on S. 1605, by Mr. Ribicoff, Mr. Pearson, and others.

I have reports here from the Department of Agriculture, the Department of Health, Education, and Welfare, and the Department of the Interior, which I want to insert in the record at this point.

(S. 1605 and reports referred to follow:)

[S. 1605, 88th Cong., 1st sess.]

A BILL To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2.z(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C. 1958 ed., Supp. III, 135(z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), changing the period at the end of section 3.a.(2)(c) to a semicolon, and adding after section 3.a.(2)(c), a new provision reading as follows: "and (d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act".

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may require the modification of the claims or labeling of, or cancel the registration of, an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary determines that registration of an economic poison should be refused, or that an economic poison that is registered does not appear to warrant the claims made for it or that the article or its labeling or other material required to be submitted does not comply with the provisions of this Act, he shall notify the applicant for registration or the registrant of his determination and the

reasons therefor. Within thirty days after service of such notice, the applicant for registration or the registrant may file a petition requesting that the matter be referred to an advisory committee to be appointed by the Secretary. Each such advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration in the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, make a report and recommendation to the Secretary as to the registration of the article. After due consideration of the views of the committee and all other data before him, the Secretary shall make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. Any person adversely affected thereby may file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objections and issue an order granting, denying, or canceling the registration or requiring the modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until final action is taken concerning registration of the product. Until such final action such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

Sec. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain

judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. Subsection 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting the second proviso therein.

SEC. 6. Subsection 3.a.(1) and subsection 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered."

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 12, 1963.

HON. ALLEN J. ELLENDER.

Chairman, Committee on Agriculture and Forestry, U.S. Senate.

DEAR MR. CHAIRMAN: We wish to thank you for your letter of May 28, 1963, giving us the opportunity to report on S. 1605, entitled "A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes."

The bill would permit the labels of economic poisons registered under the act to bear the registration numbers and would authorize the Secretary of Agriculture to require by regulation that registration numbers appear on such labels. It would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or canceling registrations, or requiring modification of claims or labeling of registered economic poisons. Provision would be made for referral of the question of the eligibility of an economic poison for registration to an advisory committee; for public hearing, if requested, with respect to the Secretary's order issued after consideration of the views of the committee and other data; and for judicial review of the order issued by the Secretary after such hearing.

In fulfilling its responsibilities under the act, this Department is hampered by a provision in the act which gives the applicant the right to demand and receive registration under protest when regular registration is denied, even though the denial is based upon a hazard to the public involved in its use. The net effect of a registration under protest is to shift the burden of proof from the applicant to the Department. Thus a chemical formulation not acceptable to the Department for registration might be marketed for an extended period on a "registration under protest" basis before proof of its harmfulness could be developed. The

intent of S. 1605 is to eliminate registrations under protest and to give this Department authority to deny or cancel any registration or require modification of claims or labeling in any case, after opportunity for referral of the matter to an advisory committee and a public hearing, but with authority for immediate suspension of any registration when the Secretary of Agriculture finds that such action is necessary to prevent an imminent hazard to the public or any portion thereof.

This Department recommends enactment of the bill if the following changes are made.

In section 3 of the bill, page 3, line 7, after "Secretary.", insert the following new sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory committee." It is believed that this authority in the Secretary is desirable.

In section 3 of the bill, page 3, line 19, preceding the period, insert the following: ", all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition". This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

The bill provides that all data submitted to the Secretary or an advisory committee shall be considered confidential until final action is taken concerning registration of the product. However, the bill also provides for such data to be included in the record at the public hearing provided for in the bill. To eliminate this apparent inconsistency, it is suggested that in section 3 of the bill, page 5, lines 20-21, the phrase "final action is taken concerning registration of the product." be deleted and the following be substituted therefor: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him." In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action." It is contemplated that under this language the Secretary would be authorized to make such data available to other executive agencies that have an official interest.

Since the provisions of the act for registration under protest would be deleted by the bill, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bill become effective. However, to avoid any possible question in this respect, it is proposed that in section 7 of the bill, page 8, line 16, the following be inserted preceding the period: ", and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate."

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 29, 1963.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of June 6, 1963, for a report on S. 1605, a bill "To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes."

The two objectives of this bill—objectives that we fully endorse—are stated in its title. Under present law, if the Secretary of Agriculture determines that an economic poison offered for registration under the Federal Insecticide, Fungicide, and Rodenticide Act would not comply with the various substantive requirements of the act, he still must, if the applicant insists, register the article though "under protest," even when the apparent violation is one that constitutes a hazard to the public health. Likewise, if an economic poison is regularly registered, the Secretary can convert the registration into a registration "under protest" but cannot cancel it outright. And, since the label of the article bears no reference to registration—it is deemed misbranded if it does—purchasers are not apprised of its protested status. The holder of an article registered under protest does incur the risk of greater penalties and automatic termination of the registration

in the event of conviction for a violation of the act, but in order to achieve this, the Government would first have to carry the burden of proving beyond a reasonable doubt noncompliance with the act's substantive requirements, such as labeling giving adequate directions for use and adequate warnings to prevent injury. The burden should, we think, be on the manufacturer to show, before an economic poison may be registered, that the article may be safely and effectively used under the proposed labeling, so that on the one hand an article may be marketed in reliance on the registration so long as it is in effect and the article and its labeling are the same as that which has been registered and, on the other hand, deviation from the registered article or its labeling will per se constitute a violation.

The present bill would—in addition to authorizing the Secretary to require the label of the economic poison to bear a registration number—substitute for the present protest-registration procedure detailed provisions that would authorize the Secretary to refuse registration, or to cancel the registration (or require modification of the labeling), of an economic poison that he considers to be violative of the act, subject to the applicant's right to have the matter referred to an advisory committee of experts and to have a reconsidered decision of the Secretary after the report of the advisory committee has been obtained, and subject to the right of any person adversely affected by such a reconsidered decision to have an opportunity for public hearing and for judicial review of the Secretary's final decision on the basis of the hearing record. (Pending referral to an advisory committee and hearing, the Secretary would be empowered to suspend registration summarily if found necessary to prevent an imminent hazard to the public.)

These provisions would carry out procedurally two of the recommendations (i.e., recommendations D. 1 and 2) in the recent report of the President's Science Advisory Committee on the "Use of Pesticides." We defer to the view of the Secretary of Agriculture as to whether these provisions are adequate, not only to do away with registration under protest but, as above suggested, to put the burden on the applicant to prove compliance with the substantive requirements of the act as to safety and effectiveness before the article may be registered, instead of placing the burden, in the last analysis, on the Secretary to prove that the article does not comply before he may refuse registration. We believe, however, that in any event certain amendments to the bill are needed from the point of view of the impact of the bill on this Department.

1. Amendments to clarify, extend, and improve the relationship between the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act with respect to economic poisons that may leave a residue in or on food

The Food, Drug, and Cosmetic (FDC) Act provides, through various regulatory procedures, for premarketing clearance for safety, including establishment of safe tolerances, for extraneous substances in or on food (including feed) that are either intended as components of food or the use of which may reasonably be expected to result in leaving a residue in food. If such a substance is present in or on food at the time of, or subsequent to, introduction of the food in interstate commerce, the food is deemed unsafe, and hence adulterated, unless the use of the additive and the amount involved are sanctioned by a clearance regulation then in effect or are exempted by the act or regulation. Chemicals that are "economic poisons" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) may be subject to one of two of these premarketing clearance procedures under the Food, Drug, and Cosmetic Act, depending upon whether the chemical is used in the production, storage, or transportation of crops or other raw agricultural commodities—in which event it is referred to as a "pesticide chemical" subject to the clearance procedure of the pesticide chemicals amendment—or is used otherwise, in which event it is, generally, subject to the clearance procedure of the Food Additives Amendment of 1958 as a "food additive" (unless it is classified as a color additive).

In the case of "pesticide chemicals" as above defined, where in the opinion of the Department of Agriculture the proposed use of the chemical in accordance with label directions will leave a residue on a raw agricultural commodity, that Department will ordinarily delay registration until an applicable tolerance or exemption has been established under the Food, Drug, and Cosmetic Act, on the ground that until the establishment of such a tolerance or exemption it cannot be determined whether there will be a violation of the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, which deem an economic poison mis-

branded if the labeling does not contain necessary directions for use "adequate for the protection of the public" or if the label does not contain necessary warning or caution statements "adequate to prevent injury to living man and other * * * animals * * *." (See Regs., 7 CFR 363.11.) We understand that extension of this procedure to situations where an economic poison offered for registration is intended for use in connection with food other than raw agricultural commodities is under consideration, though not as yet in effect. However, we assume that, under present law, the applicant could insist upon registration without awaiting a determination by this Department under the Food, Drug, and Cosmetic Act, though in such cases he might have to accept a registration under protest.

Whatever the basis for the above-mentioned procedure under the Federal Insecticide, Fungicide, and Rodenticide Act in its present form, with its escape hatch of registration under protest, we seriously doubt that, under the amendments proposed by the bill, the Secretary of Agriculture would be authorized to delay his decision, initially or otherwise, on the ground that there has been no determination under the Food, Drug, and Cosmetic Act. The provisions of the bill, with their built-in time limits, emphasize the desirability of expeditious procedure. Moreover, even if the Secretary should manage to defer his decision with respect to registration until a tolerance or exemption under the Food, Drug, and Cosmetic Act has been granted or denied, this would apparently not, as the bill is written, require or authorize him to deny registration simply on the basis of the decision reached under the Food, Drug, and Cosmetic Act; nor could the Secretary, after registration has been granted, cancel such registration simply on the basis of the decisions reached under the Food, Drug, and Cosmetic Act, such as a modification of a previously established tolerance. The hearing provisions of the bill, particularly, seem to contemplate an independent administrative decision of the Secretary of Agriculture (subject to judicial review on the record) "based only on substantial evidence of record at such hearing" (including any report of an expert advisory committee appointed under the bill), and the grounds on which the decision would have to be based would be failure to comply with substantive provisions, including those relating to safety, of the Federal Insecticide, Fungicide, and Rodenticide Act rather than with applicable standards or regulations under the Food, Drug, and Cosmetic Act. This involves the risk of duplicative, and even dichotomous, decisions of the two departments contrary to their mutual desire and contrary to the public interest.

The bill is therefore in need of amendment to prevent these results and to formalize in law, perfect, and extend to all foods the now-existing procedure applied under the Federal Insecticide, Fungicide, and Rodenticide Act with respect to economic poisons used in connection with raw agricultural commodities. This could be accomplished by amendments as follows:

(a) A requirement that an application for registration of an economic poison be accompanied by a satisfactory method of analysis which could be used to determine the presence or absence of residues in food, if the economic poison is intended for use in the production, handling, transportation, or storage of food, or for some other use that may reasonably be expected to result in leaving a residue in food when used as directed or under reasonably foreseeable conditions of use. Such an analytical method is needed both to determine whether the article should be registered on a "no residue" basis and, after such registration, whether its use bears out the expectation of "no residue."

(b) In the case of an economic poison which is intended for a use described in the preceding paragraph, a requirement that the application for registration be accompanied by full reports of adequate scientific investigations as to the amount of residues remaining in or on food.

(c) A requirement that an economic poison may not be registered unless and until this Department has certified a finding either (1) that there is no reasonable likelihood that the article will result in a residue in or on food (at or after the introduction of the food into interstate commerce), or (2) that the residue likely to result will not be deemed unsafe under the Food, Drug, and Cosmetic Act (because of a tolerance or exemption we have established, or because of other facts stated in the certification). Provision should also be made for mandatory cancellation of the registration upon certification by this Department that the earlier findings are no longer applicable by reason of changes in the tolerance or exemption previously established or of other action under the Food, Drug, and Cosmetic Act, or by reason of actual experience as to the residues which result from the use of the economic poison.

(d) The standard to be applied in determining whether a chemical should be registered is the amount of residue, if any, in or on food, that is likely to result if the chemical is used in accordance with directions or otherwise under reasonably foreseeable conditions of use. The standard to be applied in determining whether registration should be canceled is the amount of residue that is resulting from actual use of the chemical, either as directed, or under other conditions of actual use that may reasonably be expected to be followed in practice to a substantial extent.

We are enclosing draft language to carry out these recommendations.

2. *Amendments to make information available to other agencies concerned.*

We believe that the confidentiality provisions of the bill in section 3 could be a bar to proper administration, and we therefore not only endorse the recommendation in the Secretary of Agriculture's comments dealing with the proposed amendments of lines 20 and 21 on page 5 of the bill, but also recommend that the law make a specific provision, along the lines of an amendment enclosed herewith, to make it clear that the Secretary of Agriculture is not barred from providing information submitted to him to any other Federal agency consulted.

Before closing this report, we should like to note that the President has asked the responsible agencies to implement the recommendations in the Science Advisory Committee's report, including in such implementation the preparation of proposals for submission by him to Congress.

With respect to economic poisons that leave no residue in or on food but have other implications with respect to public health, we are currently engaged in evaluating the statement in the report of that Committee that "decisions on registration, clearly related to health, should be the responsibility of the Department of Health, Education, and Welfare," and the Committee's recommendation B. 4, that the "Secretaries of Agriculture, Interior, and Health, Education, and Welfare review and define their roles in the registration of pesticides that are not present on food, but that may impinge on fish and wildlife or come into intimate contact with the public." Additional proposals for the amendment of the Federal Insecticide, Fungicide, and Rodenticide Act could eventuate in the light of these Committee recommendations. We also intend to review the need for special controls over especially hazardous persistent economic poisons, whether used in connection with food or otherwise, and the question whether the availability of a new and less hazardous substance should be ground for changing the status of a previously registered article.

At this time, we recommend, for the above-stated reasons, the enactment of this bill, modified in accordance with the proposed amendments enclosed herewith which would carry out the specific recommendations of our report.

We are advised by the Bureau of the Budget that while there is no objection to the submission of this report from the standpoint of the administration's program, the matter of relationships between the food and drug and pesticide registration programs is still under study in the executive branch and a final decision will be reached thereon as soon as possible.

Sincerely,

(Signed) PHILIP H. DES MARAIS,
Acting Assistant Secretary.

PROPOSED AMENDMENTS TO THE BILL RE ECONOMIC POISONS LEAVING RESIDUES
IN OR ON FOOD

1. On page 6, change lines 15 and 16 to read as follows: "tions d. and e. as subsections f. and g., and by inserting before such redesignated subsections the following new subsections, as follows:."

2. On page 6, line 18, insert "subsection c. of" after "under."

3. Strike out the closing quotation marks on page 8, line 6, and insert between lines 6 and 7 the following:

"e. (1) The provisions of this subsection shall apply notwithstanding any other provisions of this Act.

"(2) For the purposes of this section, the registration of an economic poison shall not be valid with respect to any change from, the claims therefor or the labeling or composition thereof as described in the application upon which such registration is based, except upon the filing of a supplement to such application in accordance with such change and issuance of an order confirming such registration: *Provided*, That no such supplement need be filed with respect to a change that is not significant from the standpoint of safety or effectiveness or

from the standpoint of the residue of the economic poison remaining in or on food. As used in the following paragraphs of this subsection, the term "application for registration" includes a proposed supplement to an application on which a previous registration is based and a request pursuant to subsection g. for continuation of a registration, and the terms "register" and "registration" include confirmation or continuation of registration pursuant to such a supplement or pursuant to such a request.

"(3) A copy of every application for registration of an economic poison, and of any statement or other data filed in connection therewith, shall be transmitted by the Secretary to the Secretary of Health, Education, and Welfare, together with an opinion of the Secretary of Agriculture as to whether, on the basis of the data before him, such economic poison, when used as directed or otherwise under reasonably foreseeable conditions of use, is likely to result in a residue in or on food and, if so, the amount of such residue.

"(4) (A) An economic poison shall not be registered unless and until the Secretary of Health, Education, and Welfare has certified, on the basis of the data before him and after appropriate consideration of the opinion of the Secretary of Agriculture submitted under paragraph (3), that he finds (i) that such economic poison, when used in accordance with directions or otherwise under reasonably foreseeable conditions of use, is not likely to result in a residue in or on food (at or after the introduction thereof into interstate commerce), or (ii) that the residue likely to result from such use will, by reason of its conformance with a tolerance or exemption established under the Federal Food, Drug, and Cosmetic Act or by reason of any other facts found and stated in such certification, not be deemed unsafe within the meaning of section 406, 408, 409, or 706 of such Act.

"(B) Such certification shall in any event be refused unless the application and other data submitted to the Secretary of Health, Education, and Welfare under paragraph (3) or submitted to him directly by the applicant include the following:

"(i) Full data showing the chemical identity and composition of the economic poison.

"(ii) Practicable and reliable methods of examination for determining the amount of residue, if any, of such economic poison in or on food if such economic poison is intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, or is intended for any use that may reasonably be expected to result, directly or indirectly, in its leaving a residue in or on food when used as directed or otherwise under reasonably foreseeable conditions of use.

"(iii) Full reports of adequate investigations (made in accordance with the methods referred to in clause (ii)) showing the amount of such residue, if any, remaining in or on food when such economic poison is used as directed or otherwise under reasonably foreseeable conditions of use, except that such investigations, if not made, may be dispensed with by such Secretary if such economic poison is not intended for a use described in clause (ii).

"(5) Whenever the Secretary of Health, Education, and Welfare certifies that he finds (A) that, by reason of action (specified in such certification) taken under section 406, 408, 409, or 706 of the Federal Food, Drug, and Cosmetic Act, as the case may be, the probable residue of an economic poison in or on food assumed as a basis for a prior registration of an economic poison would now be deemed unsafe within the meaning of such section, or (B) that the actual use of such economic poison as directed, or under other conditions of actual use that may reasonably be expected to continue to be followed in practice to a substantial extent, has resulted in leaving in or on food, at or after the introduction thereof in interstate commerce, a residue that for reasons stated in such certification is deemed unsafe within the meaning of any such section of such Act, the Secretary of Agriculture shall cancel such registration on thirty days' notice, except that, if the order of certification of the Secretary of Health, Education, and Welfare includes a finding of imminent hazard to the public health pursuant to clause (C) of the proviso to paragraph (6) of this subsection, such registration shall be suspended without prior notice pending final action of such Secretary.

"(6) Certifications, or refusals of certification, of the Secretary of Health, Education, and Welfare under this subsection shall be made by order. The procedure for the issuance, amendment, or revocation of such orders, including opportunity for hearing on the record to any person adversely affected by the Secretary's action or proposed action, shall be prescribed by such Secretary by

regulations and shall follow as nearly as practicable the procedure governing orders of the Secretary of Agriculture set forth in subsection c.: *Provided*, That (A) the question whether or on what terms a tolerance, or exemption from the requirement of a tolerance, should be established, modified, or revoked under any provision of the Federal Food, Drug, and Cosmetic Act shall not be put in issue in any proceeding under this section; (B) the referral of a matter to an advisory committee shall not be mandatory on the Secretary of Health, Education, and Welfare unless requested by the applicant or registrant; and (C) where such Secretary finds that there is an imminent hazard to the public health he may immediately make the certification provided for in paragraph (5), in which event he shall give prompt notice to the registrant and afford him the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this paragraph (6) and shall, after such opportunity, issue a final order confirming, modifying, or setting aside his earlier order. Final orders under this paragraph shall be subject to judicial review on the record in accordance with the procedure set forth in subsection d. of this subsection, and for that purpose the term "Secretary" as used in subsection d. shall mean the Secretary of Health, Education, and Welfare. Notwithstanding the foregoing provisions of this paragraph, the two Secretaries may, to the extent they deem it practicable and in the interest of efficiency and convenience of the parties, provide by joint or parallel regulations for joint hearings before them, in which event judicial review of such orders may be initiated by a single petition.

"(7) As used in this subsection, the term 'residue' includes the breakdown products of an economic poison in foods; and the term 'food' means such term as defined in the Federal Food, Drug, and Cosmetic Act."

4. Change the two sentences beginning on page 5, line 16, to read as follows: "All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary, by any other Federal agency officially consulted by the Secretary in connection therewith, and by such advisory committee until the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him. Until such action such data shall not be revealed to any person other than those authorized by the Secretary, or by an advisory committee in the carrying out of the official duties under this section, or by the head of such other Federal agency."

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 19, 1963.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR SENATOR ELLENDER: Your committee has requested this Department's report on S. 1605, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

We recommend the enactment of S. 1605, if amended as suggested herein.

This Department, in carrying out its responsibilities of administering our national parks and conserving fish and wildlife, is convinced of the need to provide a more effective means of controlling the use of chemicals potentially harmful to living man, domestic animals, and fish and wildlife. S. 1605 is designed to accomplish this by strengthening the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. sec. 135 et seq.). The bill deletes the provisions of that act permitting registration of economic poisons under protest and establishes procedures for granting, denying, or canceling the registration or requiring the modification of the claims or the labeling by the applicant for registration.

In addition S. 1605 establishes procedures for referring the Secretary's determination that registration of an economic poison should be refused, canceled, or the claims or labeling modified, to an advisory committee appointed by the Secretary, if the applicant or registrant requests this. We understand that the Department of Agriculture has suggested that provision also be made for referral to the committee on the Secretary's motion at any time. The committee then reviews the application and all relevant data, and presumably the determination

of the Secretary, and makes its report and recommendations to the Secretary. The bill then provides for the Secretary to consider the committee's views and all other data and to make a new determination and issue a new order with a findings of fact. Following this, any aggrieved person may file objections and request and be granted a hearing for the purpose of receiving evidence relevant and material to the issues raised by the objections. After completion of the hearing the Secretary is again required to issue an order, based on the whole record, denying, or canceling the registration or requiring a modification of the claims or the labeling. The order of the Secretary would then be subject to these lengthy procedures, we believe that the procedures may prove to be too cumbersome and work a hardship on all those concerned.

One of the principal concerns of this Department is the effect of pesticides on fish and wildlife. These effects should be considered during the registration of these chemicals. S. 1605 provides an opportunity for a careful consideration of these effects by an advisory committee, in addition to the consideration given by the Department of Agriculture. Each advisory committee shall include experts selected by the National Academy of Sciences and one or more persons from land-grant colleges. Since the bill specifically provides for representatives of these colleges, we believe that a provision for including on such a committee one or more persons familiar with the effects of pesticides on fish and wildlife also is necessary. Accordingly, we recommend that page 3, line 11, of the bill be amended by striking the period after "colleges" and inserting a comma and the following clause: "and one or more biologists familiar with the effects of pesticides on fish and wildlife."

In the alternative, however, we would not object to deleting the provision for including representatives of land-grant colleges and one or more biologists. We believe that the bill is broad enough to permit the National Academy of Sciences to include such representatives when necessary without specifically providing for such representation. Further, there may be occasions where their representation would serve no useful purpose.

Section 3 of the bill, among other things, authorizes the Secretary of Agriculture to order the suspension of the registration of an economic poison immediately, when he finds such action is necessary to prevent an imminent hazard to the public. This would be applicable to economic poisons now registered under the act. Procedures similar to those described for registering pesticides would be applicable to suspended registrations. We believe this provision is essential. However, we believe that the term "public" may not include fish and wildlife and other natural resources. Accordingly, we recommend that S. 1605 be amended on page 6, line 3, after the word "public," by inserting therein "including an imminent hazard to man, or animals or plants useful to man, including useful fish and wildlife,".

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

/s/ STEWART L. UDALL,
Secretary of the Interior.

Senator JORDAN. Mr. Newman, will you come forward?

You have a statement from Senator Ribicoff, who is one of the authors of this bill, and who is on his way to Belgrade right now. He did not know at the time we set this hearing he would be leaving. He asked that his statement might be inserted in the record, which, of course, we are glad to do. And we are sorry he cannot be here in person. But it is understandable. He has gone over to the Inter-parliamentary Union. He has done a lot of work on this bill.

We are glad to have Mr. Newman to bring this.

This will be inserted in the record at the very beginning of this hearing. And we appreciate your bringing it in.

(The statement referred to follows:)

STATEMENT OF HON. ABRAHAM RIBICOFF, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to appear here this morning in support of S. 1605. The subcommittee is doing the Nation a real service by the speedy action that is being taken on this important legislation.

My comments will be brief, this morning, as I know you have many expert witnesses to hear in the next 2 hours. I do want to emphasize the importance of the legislation before you. Since its introduction two additional products have reached the market without satisfactory proof of safety. Both were the so-called continuous action lindane vaporizers which have never been proven safe for home use.

As you know, S. 1605 would end the practice of protest registration whereby the manufacturer of a pesticide can market a product despite Department of Agriculture doubts as to its effectiveness or safety.

Fortunately, we have been able to avoid a national tragedy while this gap in consumer protection remained in the law. Only a very few products, a list of which is attached, out of the thousands registered, have been "protest registered" over the past 16 years. Even these have been too many and it is time to close the gap.

Despite our relatively good fortune in the past, the danger of an unsafe product coming on the market is always with us under existing law. Let me give you a few examples of what I mean.

1. A number of manufacturers have submitted for registration under the Federal Insecticide, Fungicide, and Rodenticide Act labeling for chlordane aerosol formulations for household use. These were intended for use in controlling various household pests, including flies and mosquitoes. Registration was refused for products bearing directions for use which would result in an aerosol dispersal of chlordane. USDA pharmacologists did not consider such a use to be safe. Their judgment was based partly on the findings of the Food and Drug Administration, which showed that chlordane formulations in some cases could produce skin and eye irritation. Since aerosol uses risk contact of the spray with skin and eyes, such usage could not be accepted and registration was refused. The Public Health Service was asked to review this matter and endorsed the decision.

2. On a number of occasions registration of floor waxes containing dieldrin has been requested. Such products were intended for use in controlling various household insects. USDA pharmacologists did not consider complete floor coverage with such waxes to be safe, and refused to register them. Dieldrin formulas for household use required directions which would not exceed the patterns set forth in USDA interpretation 19. It was concluded that no directions could be written which would meet the requirements of this interpretation, and still provide a useful floor wax.

3. USDA was asked by one firm to consider registration of a parathion formulation for use in rodent control. Another firm asked USDA about the possibility of obtaining registration for a parathion product for household use, and for the control of fleas and other pet insect parasites. These firms were informed that such uses were unacceptable due to the high toxicity of parathion. USDA toxicological experience and the scientific literature indicated that such use would be hazardous and would risk injury or death. Since there was much more than a "reasonable doubt" as to the propriety of the use, registration was denied.

4. As a result of cases of methemoglobinemia reported in premature infants on whom diapers treated with disinfectants containing TCC were used, USDA reviewed the registration status of all formulations containing this compound. Registration was canceled on several products where directions for use involved industrial laundry soaps wherein the treated diapers or clothing could likely be autoclaved in routine hospital practice. Due to this action, all such products were removed from use. This specific action was taken, since detailed studies have proved that TCC was capable of decomposition, and diapers were able to absorb the breakdown products in hospital autoclaves. In addition, USDA required manufacturers to place on the labels of certain laundry products warnings against boiling or autoclaving.

Each of these four products could be on the market today under protest registration. Only after accumulation of considerable evidence could USDA move against them and cause their removal. The public, in the meantime, would serve as guinea pig. This bill makes sure that such a possibility will not happen.

The policy of this Nation should always be that a pesticide should not come on the market until adequate proof of safety has been established and it should not be left for the public to play the role of guinea pig while the true facts of toxicity are brought out. Today, it is possible under the law to subject the public to that role when the Government is not satisfied with the manufacturer's proof of safety and yet lacks definite evidence of lack of safety. That gray area must be decided in favor of the public—the consumer.

As you know, protest registration was supposedly a technique to force a court review whenever the manufacturer and the Government disagreed on the safety or effectiveness of the product in question. The proposed legislation rejects this archaic concept of consumer protection and substitutes a system under which both the public's interest and a manufacturer's rights are protected. And this protection runs from the initial decision, through an advisory committee, through a hearing on the record, through judicial review.

In addition, the legislation requires that every pesticide formulation carry its official registration number on the label. In this way the public will be able to tell at a glance that the product on the shelf has satisfied the requirements of Federal law as to its effectiveness and safety when used according to the direction on the label.

This legislation is recommended by the President's Science Advisory Committee. It has been endorsed by the heads of the various affected Federal agencies, the regulated industry and by every witness to appear before our Senate subcommittee now studying the problem of the use of pesticides. I know the cosponsors of S. 1605—Senator Pearson of Kansas, Senator Pell of Rhode Island and Senator Javits of New York—join me in urging your favorable consideration of this important measure.

Mr. NEWMAN. May I say for the Senator he is very appreciative of your courtesy in scheduling this hearing at this time. He regrets the scheduling of his trip was such—this very minute his plane is leaving for Belgrade.

Senator JORDAN. For your information—this is just par for the course in the Senate. I set this hearing at his request at the time that suited him. Now he is in Belgrade.

It would have been just about the same thing if I had been absent myself—because that happens quite often—which we cannot help. There is no way we can regulate it.

I was just informed Senator Pearson, another author of this bill, is on his way to Belgrade, also. We will get his statement, and insert it in the record as soon as he supplies one for us—because he was supposed to have been here this morning.

(The statement referred to follows:)

STATEMENT OF THE HON. JAMES B. PEARSON A U.S. SENATOR FROM THE STATE OF KANSAS

Mr. Chairman, members of the subcommittee; I appreciate this opportunity to express my support of S. 1605. Under the able chairmanship of Senator Ribicoff, the Reorganization and International Organizations Subcommittee of the Committee on Government Operations, has been engaged for several months in hearings on the intergovernmental and interagency aspects of the registration and control of use of pesticides. Throughout these hearings, as a member of this subcommittee, I have been impressed with the evidence of the rapid expansion of use of these particular chemicals.

Pesticides have become vital, if not essential tools to the carrying on of a successful agricultural economy. Especially significant is the impact pesticides have made on the improved quality and reduced cost of agricultural products. They have benefited the farmer by reducing fear and labor, as well as the heartbreaking loss which he previously suffered from a crop loss due to infestation of insects, rodents, and weeds.

The health and comfort of our people have also benefited almost beyond belief as we have reduced disease and the insect nuisance by the use of these chemicals.

In total, the benefits from the availability and use of pesticides have been great and the harmful effects have been relatively small. This condition is, I am sure, the result of the general concern for the public interest demonstrated by the chemical industry, the formulators and applicators, and the host of able and dedicated public servants in the Department of Agriculture and the Public Health Service whose responsibility it is to test, register, and observe the use and effects of these chemicals.

The present effective and high level of safe use is also due to the foresight of the Congress as represented by its passage of the Federal Insecticide, Fungicide and Rodenticide Act several years ago.

Nevertheless, times change and we benefit by experience. It has now become obvious that the registration under protest procedure, with which S. 1605 deals, has now proven to be unsatisfactory although at the time the regulatory act was passed, it seemed necessary and adequate. Not only is a better procedure available, but the under protest registration provides an opportunity to negate the beneficial aspects of existing review and regulatory procedures, and in fact, jeopardizes the integrity of legitimate registered products.

It is a fact that a relatively few products have been marketed using the registration under protest procedure. Most manufacturers accept the responsibility which is theirs and comply with the Department of Agriculture's registration requirements. The few products which have reached the market make it clear that we cannot afford that the law now permits a potential danger to exist. A danger which is within our capacity to eliminate. S. 1605 provides a procedure to eliminate the under protest registration which has been tested and accepted for the registration of drugs by the Food and Drug Administration and one which will protect the consumer without placing undue burdens upon the producers of the products involved.

I strongly urge the committee approval of S. 1605 with careful attention to the amendments submitted by the Department of Agriculture and the affected industry.

Senator JORDAN. I have been informed, also, that a third sponsor, Senator Pell, had a statement he wanted to make on this bill, and he will file it later.

(The statement referred to follows:)

STATEMENT OF HON. CLAIBORNE PELL, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

As a member of the subcommittee of the Committee on Government Operations which has been investigating the dangers of unregulated use of pesticides, I should like to add my full support to S. 1605 which would make it more difficult for a manufacturer to market a pesticide, when the safety or effectiveness of that product is still in doubt.

I am advised that this bill is designed to protect the public against those very few manufacturers who persist in marketing their products over objections raised by the Department of Agriculture. The vast majority of manufacturers now comply with the requests of the Department but there is a very small number, 1 in every 2,280 registrations now granted, who insist on securing protest registrations. Although this is admittedly a very small area of noncompliance, it could be a lethal one if a dangerous product were to be admitted to the market.

S. 1605 would protect the public against this risk by establishing new and more rigorous procedures for registration. At the same time, it would protect the rights of manufacturers by permitting judicial review of adverse decisions. I am fully convinced that this legislation is wholly desirable and that it should be promptly enacted.

Senator JORDAN. We will leave the record open if anyone else wants to file a statement.

Dr. Clarkson, I believe you are first on the agenda here—Associate Administrator, Agricultural Research Service, U.S. Department of Agriculture.

We are glad to hear you, sir.

You have a prepared statement?

Dr. CLARKSON. Yes, it has been distributed, sir.

Senator JORDAN. Are you going to follow your prepared text?

Dr. CLARKSON. I would like to, if I may.

I have with me Mr. Justus Ward, who is the Director of the Pesticides Regulation Division.

Senator JORDAN. Mr. Ward, we are glad to have you, sir.

Mr. WARD. I am glad to be here, sir.

**STATEMENT OF DR. M. R. CLARKSON, ASSOCIATE ADMINISTRATOR,
AGRICULTURAL RESEARCH SERVICE, U.S. DEPARTMENT OF AGRICULTURE**

Dr. CLARKSON. We appreciate the opportunity to appear before you to express the views of the Department of Agriculture regarding S. 1605, now under consideration by this committee.

The bill would delete the provisions now in the act for registration of economic poisons under protest, and would prescribe the procedures to be followed in refusing or canceling registration or requiring modification of claims or labeling of registered economic poisons.

The intent of the bill also is to permit the labels of economic poisons registered under the Federal Insecticide, Fungicide, and Rodenticide Act to carry the registration numbers and to authorize the Secretary of Agriculture to require, by regulation, that such registration numbers appear on the labels.

In the registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, the Department must consider both the effectiveness and safety of each product submitted. This requires the most careful evaluation of a wide range of products.

These products are complex. Although many of them have similar properties, each one differs from the others in some important aspect. They vary from insecticides for corn borers to repellants for mosquitoes; from nematocides to protect tobacco to ant and cockroach killers; from herbicides for control of weeds in lawns to killers of rats and mice; from fungicides to prevent decay in wood to insecticides for malaria mosquitoes. Over 50,000 formulations based on more than 500 individual chemical compounds have been registered.

When an applicant is seeking registration of a new pesticide, detailed and convincing data must be furnished to the Department showing that the product will give effective and safe pest control under the proposed conditions of use. He must furnish the labels to be used on the containers. Several hundred pages of charts, formulas, and text setting forth the results of testing may be required to support an application for a new chemical.

The data submitted by the applicant is studied by a competent staff of scientists, including pharmacologists, entomologists, bacteriologists, chemists, biologists, and and plant pathologists. If the Department feels more data are needed for evaluation in support of the claims of the applicant, the Department asks that it be provided. If the Department feels that a proposed label does not contain adequate directions and warnings to protect the public, the applicant is asked to make the necessary corrections. If the evidence is convincing that the proposed

chemical is safe and effective when used as directed and all labeling requirements are met, the Department grants a registration.

The Department is hampered by one feature in the act which gives the applicant the right to demand and receive "registration under protest" when regular registration is denied, even though the denial is based upon lack of adequate data to prove the safety or effectiveness of the proposed use. The net effect of a registration under protest is that: (1) An economic poison which the Department believes is not entitled to registration under the act is nevertheless distributed in commerce; (2) State officials responsible for the regulation of pesticides within their States are hampered in bringing the same or similar products into conformity with State requirements; and (3) the burden of proof as to the safety and effectiveness of the product in relation to the Federal Insecticide, Fungicide, and Rodenticide Act shifts from the applicant to the Department.

Accordingly, a formulation that is not acceptable to the Department for registration might be marketed for an extended period of time on a "registration under protest" basis until the Department can develop the extensive performance and toxicity records essential for effective court action to remove the product from the market.

The proposed legislation would eliminate registrations under protest and give the Department authority to deny or cancel any registration, or require modification of claims on labeling in any case, with provision for the applicant to request that the matter be referred to an advisory committee or to request a public hearing. Additionally, the Secretary would be given authority for immediate suspension of any registration when he finds such action is necessary to prevent an imminent hazard to the public. Such hazard might be directly to human health or safety, or present an imminent danger to livestock, crop, or fish and wildlife values.

The bills under consideration also provide for the presence on the label of the Federal registration number assigned to a product. This would readily identify products registered with the Department for marketing in interstate or foreign commerce. As it now stands, there is nothing on the label to distinguish between those formulations registered with the Federal Government and those that may be packaged and offered for sale without registration, and the law actually forbids any reference to registration on the label or in the labeling. The Department thinks it is advisable to provide for requirement of the registration number on the labels by regulation in order to afford flexibility in applying such requirement to classes of products where it will protect purchasers or otherwise effectuate the purposes of the act.

The Department heartily supports this bill, as indicated in our report on S. 1605 to the committee on July 12, 1963. Secretary Freeman expressed concern over the registration under protest provision in the current law when he testified before the Senate Subcommittee on Reorganization and International Organizations earlier this year.

The Department recommends several changes in language for purposes of clarity and better administration, as follows:

Mr. Chairman, these are all set forth in the Department's report on the bill. They are, for the most part, perfecting language, with one exception.

One of them, item 2 on page 5 of my statement, would provide that the party requesting a review before an advisory committee would pay the costs of such an advisory committee. In other words, if the Secretary should ask it, the Department would pay the costs. If this were requested by someone outside the Department, that party would pay the cost of the advisory committee. These costs are not expected to be great. The committee must wind up its work within a reasonably short period of time. It would be the travel and per diem expenses for the committee members.

Senator JORDAN. This is in the cases where a license has been granted, and he has asked for review; is that right?

Dr. CLARKSON. Where registration either has been denied in the first instance, or it has been granted and then canceled by the Department, and the petitioner, or the registrant, feels that this has been done arbitrarily. He may then ask that it be reviewed by this special committee of scientists nominated by the National Academy of Science.

Senator JORDAN. Well, do they have to review it if he asks for a review, or can they deny a review?

Dr. CLARKSON. They have to. The committee would be appointed by the Secretary, but would be merely nominated by the Academy.

Senator JORDAN. In other words, he does have the right of review.

Dr. CLARKSON. He does have the right of review; yes, sir.

Senator JORDAN. You know, we run into cases sometimes where departments get too much authority, and they just say, "This is final," and you don't have any recourse. That, I don't believe in at all. And I don't think you want to put that in the law.

Dr. CLARKSON. No, sir; this would give the party the right to review by the advisory committee, and the right to a public hearing if he so desires.

Senator JORDAN. Fine. Thank you.

You may proceed.

Dr. CLARKSON. Well, if the chairman wishes to go through the amendments, I will be glad to do so. Otherwise, I will leave them with the committee—at your pleasure, sir.

(The amendments are as follows:)

1. In section 3 of the bill on page 3, line 7, after the word "Secretary.", insert the following sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory committee." It is believed that this authority in the Secretary is desirable in the event that he wishes consultation on questions of pesticide safety or effectiveness with expert authorities in other scientific institutions who could contribute information, experience, and judgment to supplement that already available to the Department, in evaluating data submitted by the applicant.

2. In section 3 of the bill, on page 3, line 19, preceding the period, insert the following: "all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition." This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

3. In section 3 of the bill, on page 4, line 2, change the word "in" following registration to "of". This appears to have been a typographical error.

4. In section 3 of the bill, on page 5, lines 20 and 21, delete the phrase "final action is taken concerning registration of the product.", and substitute the following: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him." In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". These changes are submitted to eliminate an apparent inconsistency by the provision

in the bill that considers all data submitted to the Secretary or an advisory committee confidential until final action is taken concerning registration of the product, but also providing for such data to be included in the record at the public hearing provided for in the bill.

5. In section 7 of the bill, on page 8, line 16, insert the following proceeding the period: “, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.” Since the provisions of the act for registration under protest would be deleted by the bill, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bill become effective. However, to avoid any possible doubt in this respect this change is proposed.

Senator JORDAN. There were some amendments proposed by HEW and Interior. Do you want to comment on them?

Do you have a copy of those amendments?

Dr. CLARKSON. I don't have them before me.

Senator JORDAN. You should have had a copy of these things.

Dr. CLARKSON. We have had them—I just don't have them before me.

Senator JORDAN. Here is HEW. Do you want to comment on those amendments?

Dr. CLARKSON. If I might, Mr. Chairman, call attention, first, to the last paragraph of the letter from the Department of Health, Education, and Welfare, which states as follows: “We are advised by the Bureau of the Budget that while there is no objection to the submission of this report from the standpoint of the administration's program, the matter of relationships between the food and drug and pesticide registration programs is still under study in the executive branch, and a final decision will be reached thereon as soon as possible.”

Now, as to the Department of Agriculture's position, we are, of course, participating in the general study of this matter which is referred to by the Bureau of the Budget.

We do not, as a Department, accept the amendments put forward by HEW, for two reasons: One, the bill before the committee does not change the interdepartmental relationships of one department with another, but are such as to perfect the work of one department, the Department of Agriculture, which has the responsibility for enforcement of this act. Therefore, it seems to us that amendments of this broad scope are not appropriate at this time.

Secondly, the amendments are so broad that they would in effect remove the administrative authority for decisions under the basic provisions of this act from the Secretary of Agriculture to the Secretary of Health, Education, and Welfare.

As I say, the Department of Agriculture is not in favor of these amendments.

Senator JORDAN. All right.

Now, you have one from Interior. You have seen that?

Dr. CLARKSON. Yes, sir, I have.

Senator JORDAN. There is the amendment.

Dr. CLARKSON. The Department of Interior amendments are in the alternative. They would suggest, in that provision of the bill where the Academy of Science would be asked to nominate scientists to serve on the advisory committee, that it be required that one or more biologists familiar with the effects of pesticides on fish and wildlife must necessarily be included in the group.

We do not think that the scientists should be designated ahead of time in this way. That is, the current provisions do not say whether they should be biologists, chemists, veterinarians, M.D.'s—they make no specification of this kind.

We think it not wise to make this kind of specification—because one cannot judge ahead of time the particular question that may be under review by the advisory committee.

We note, however, that the Department of the Interior has an alternative. They say, "In the alternative, however, we would not object to deleting the provision for including representatives of land-grant colleges and one or more biologists."

In the current provisions, it does say that one of the members of the committee shall be a representative of the land-grant colleges.

We think that this is desirable.

Senator JORDAN. Would he have to be a scientist?

Dr. CLARKSON. He would be a scientist.

Senator JORDAN. I would not think you would want to take the janitor.

Dr. CLARKSON. No, sir.

Mr. Chairman, the nominations are made by the National Academy of Sciences, so I think we can be content that they will be scientists.

We think it good to draw from the land-grant colleges. We think that almost without exception even without this provision, the Academy would draw one or more of the people from the land-grant colleges. Accordingly, if it were omitted from the bill, I don't think any harm would be done.

Senator JORDAN. Dr. Clarkson, I would be glad to ask Mr. Kirk and Mr. Datt to come up and have a seat at the table, if you would like to ask them any questions.

Dr. CLARKSON. I have no questions.

Senator JORDAN. All right.

Does that complete your testimony?

Dr. CLARKSON. Yes, sir.

Senator JORDAN. Thank you very much. I appreciate it very much, having both of you.

Dr. CLARKSON. Thank you, Mr. Chairman.

Senator JORDAN. Mr. Kirk?

Mr. Kirk is Assistant Commissioner, Food and Drug Administration, Department of Health, Education, and Welfare.

Mr. Kirk, we are mighty glad to have you, sir.

Mr. KIRK. Thank you, sir.

Senator JORDAN. Do you have anyone with you?

Mr. KIRK. No, sir.

Senator JORDAN. Mr. Kirk, you may proceed in any way you like, sir.

Mr. KIRK. I have this prepared statement, sir.

Senator JORDAN. Fine. Would you like to read it?

Mr. KIRK. As you like, sir.

Senator JORDAN. You may proceed with it, if you care to.

STATEMENT OF J. K. KIRK, ASSISTANT COMMISSIONER, FOOD AND
DRUG ADMINISTRATION, U.S. DEPARTMENT OF HEALTH, EDU-
CATION, AND WELFARE

Mr. KIRK. Mr. Chairman, members of the committee, we appreciate this opportunity to comment on S. 1605.

The Department of Health, Education, and Welfare fully endorses the two objectives of this bill. In the case of foods and drugs, the Federal Food, Drug, and Cosmetic Act clearly requires proof of safety before products are placed on the market for public use or consumption. We believe there are sound reasons for applying the same requirement to pesticide chemicals. The bill has ample safeguards whereby an adverse decision by the Secretary of Agriculture may be reviewed. This follows procedures established in cases involving petitions for regulations under the pesticide chemicals amendment to the Food, Drug and Cosmetic Act, which deals with the establishment of tolerances for pesticide residues in or on food.

The second objective of the bill to require registration numbers to appear on labels, is also valuable. Since we are charged with the responsibility for being sure that food products marketed in interstate commerce do not bear or contain illegal residues, we have conducted and participated with the Department of Agriculture in many educational programs calling attention to the need for proper use of pesticide chemicals to avoid the production of illegal crops.

Senator JORDAN. What do you mean by to avoid the production of illegal crops?

Mr. KIRK. Well, if the man uses the pesticides at the wrong time, too close to harvest, or if he is supposed to use 1 pound per acre and he uses 2, he perhaps will end up with a crop which has too much residue. In other words, if the tolerance is, say, five parts per million, he may end up with something higher than that, and that crop is then contraband, subject to seizure.

Senator JORDAN. You mean to say it is not fit for human consumption?

Mr. KIRK. In its present condition. It may be rendered legal, perhaps, by stripping or washing or even weathering.

Senator JORDAN. I wondered just what that term meant, because I did not see how you could produce another crop. It is what might be absorbed in the growing of the plant.

Mr. KIRK. That is right.

Senator JORDAN. Thank you.

Go ahead, sir.

Mr. KIRK. Our theme throughout these programs has been "Read and heed the label as registered by the Department of Agriculture," since the directions and precautions required on registered labels are so designed that, if followed, excessive or nonpermitted residues should not result. Under the present system, the labels do not bear any indication of registration and we have been asked many times how a grower can be sure that the label on the package he buys is, in fact, one which has been registered by the Department of Agriculture. Printing the registration number on the label should correct this situation.

The Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act present a number of mutual problems to the Department of Agriculture and the Department of Health, Education, and Welfare. Under the pesticide chemicals amendment to the Food, Drug, and Cosmetic Act, a petition for a tolerance in or on a raw agricultural product as submitted by a person who wants a registered label for the pesticide must first be reviewed by the Department of Agriculture. We proceed to evaluate the petition only after the Secretary of Agriculture has certified that the product is useful for the purpose intended. If, however, our scientists conclude that a finite tolerance is not justified, the Department of Agriculture does not register the label with directions which would leave a residue. We believe that, especially in view of the formalization of adjudicative procedures in this bill, it should be amended to insert in the Insecticide, Fungicide, and Rodenticide Act specific provisions requiring the Secretary of Agriculture to refuse registration where a residue in or on a food is reasonably to be expected, but where no tolerance or exemption from tolerance has been established under the Food, Drug, and Cosmetic Act. This should encompass both raw agricultural commodities and processed foods.

Some pesticides are proposed for use on food crops where the intent is to use the pesticide without resulting in any residue at the time the crop is marketed. Others are intended for use where application to a food crop is not intended. Unfortunately, the manufacturer's intentions do not always work out in practice, and a weed killer intended for widespread use on roadsides, for example, may contaminate adjoining crops; or a pesticide which is intended to be so used on a food crop that it will result in no residue, actually does leave such a residue, either through use other than in accordance with directions, or because of unanticipated growing conditions.

When this occurs, we may be faced with a significant regulatory problem in protecting the public health, since we must apprehend the produce, demonstrate the presence of the illegal residue, and take immediate steps to remove the food from the market under the seizure provisions of the law.

Obviously, we cannot fulfill our obligations in such cases unless we have a method of determining the presence of the pesticide residue. In establishing tolerances, the Food, Drug, and Cosmetic Act requires that we be supplied with a method of analysis adequate for enforcement purposes. There is no requirement in the Insecticide, Fungicide, and Rodenticide Act for the submission of adequate methodology where the use of a pesticide submitted for registration involves a nonfood crop, or where the petitioner proposes registration for use on a crop and believes that his data demonstrate that no residue would result from use as directed.

In fact, there is no legal requirement that the FDA even be consulted on these cases if the Department of Agriculture scientists agree with the petitioner, although in actual practice there are informal discussions between the two units in cases where the USDA people believe that there may be unresolved questions.

We are convinced, therefore, that for the safety of our food supply, it is in the public interest to require, by statute, where there is a reasonable expectation that the pesticide may contaminate

food during production, transportation, or storage, including food processing, that the petitioner for registration submit a method of analysis acceptable to the Department of Health, Education, and Welfare. In the case of an application for a "no residue" registration in or on a food, HEW should review the residue data submitted and/or the use restrictions proposed, to support such registration. We contemplate that, in such cases, a prerequisite to registration would be a certification by the Secretary of Health, Education, and Welfare to the Secretary of Agriculture that such method is acceptable and that, where a food is involved, the data adequately show, or the conditions of use are such, that no residue is to be expected.

There should also, in our opinion, be a provision for canceling registration at any time we find that the original conclusion about "no residue" is in error or if a previously established tolerance is reduced. We, of course, do not contemplate that such cancellation would be called for on the basis of an occasional misuse.

Finally, we believe that the confidentiality provisions of the bill should be revised to make it clear that data in an application for registration may be made available at any time to the Department of Health, Education, and Welfare, or to any other Government agency consulted by the Secretary of Agriculture.

I have tried to touch on the highlights of the views of the Department. However, the Department's report on this bill, dated August 29, 1963, discusses these proposed changes in detail.

Thank you, sir.

Senator JORDAN. Thank you very much.

Senator NEUBERGER, do you have any questions?

Senator NEUBERGER. I believe not.

Senator JORDAN. Thank you, Mr. Kirk.

Mr. Datt?

Mr. Datt is assistant to the director of the Washington office of the American Farm Bureau Federation.

Mr. Datt, we are glad to have you with us, sir. We would be glad to hear from you.

STATEMENT OF JOHN C. DATT, ASSISTANT TO THE DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION

Mr. DATT. Thank you very much, Senator.

We appreciate this opportunity to present the statement of the American Farm Bureau Federation on this particular legislation.

This legislation, as we understand it, would amend the Federal Insecticide, Fungicide, and Rodenticide Act to do two things:

(1) Require that when the Secretary of Agriculture registers one of the economic poisons he would provide for the label to contain the registration number assigned to that particular product.

(2) Eliminate the provisions whereby economic poisons can be registered by their manufacturers under protest.

Farm Bureau is a free, independent, voluntary organization of farm and ranch families. Currently we have over 1,600,000 members in some 2,700 counties and 49 States and Puerto Rico. Farm Bureau members use substantial quantities of agricultural chemicals and drugs. Therefore, we are quite interested in any legislation that affects their use.

Agricultural chemicals and drugs have become very essential to the economic production of food. Farmers are vitally interested in protecting the public health and welfare of our consumers at all times. We have a responsibility to see that agricultural chemicals and drugs are properly used. We have conducted educational programs among our members in order to insure proper use.

Farm Bureau in the past has supported legislation to provide for the proper labeling and use of agricultural chemicals and drugs for the protection of public health and welfare.

The proposed legislation is, in our opinion, designed to further provide for proper use of agricultural chemicals and drugs as well as to provide for increased protection to consumers.

The first section of the proposed legislation dealing with the labeling of economic poisons with registration numbers would be of assistance to farmers and ranchers. If these economic poisons contained registration numbers, a producer would then know that the product had been registered and cleared by the U.S. Department of Agriculture for proper use. He would then know that if he used the product according to directions provided him by the manufacturer, the final food product would be safe for consumers.

The second provision of the bill deals with the elimination of registration under protest. Currently a manufacturer of an economic poison can present his product to the Secretary of Agriculture for registration. If the product meets the requirements set forth by the law and carried out by the Secretary, he will register it for proper use. However, in the event that the product fails to meet the procedures established by the Secretary, he can refuse to register the product. Under these circumstances the manufacturer does have the privilege to proceed and market the product under the so-called registration-under-protest provision.

While it is our understanding that very few of the products that have been registered under protest would be directly used by agricultural producers, we are concerned about this provision and support legislation to eliminate it.

From the producer's standpoint, it is important that he know that an agricultural chemical or drug has been properly cleared by the Secretary of Agriculture. Even though a manufacturer of a product may be responsible, it is the farmer who takes much of the blame when an economic poison causes injury or harm. A farmer might use one of the products that had been registered under protest and not fully realize this and therefore subject himself to serious problems.

Because of the discussion that has taken place in recent weeks concerning the use of agricultural chemicals and drugs, we believe it is important that all steps be taken to make it possible for farmers to use them safely. The use of agricultural chemicals and drugs has been largely responsible for providing consumers with low cost, high quality food. The use of these products is essential if we are to continue to maintain this high standard in our food production.

Farm Bureau for a number of years has, through all phases of the organization, conducted an aggressive educational program to be certain that individual farmers adhere strictly to the recommendations for the proper use of agricultural chemicals and drugs. We

shall continue this educational program because we recognize that we have a responsibility as farmers and ranchers to see that these products are properly used.

The Farm Bureau supports the passage of S. 1605 and hopes that the committee will give it favorable early consideration.

We appreciate the opportunity to present our views on this legislation.

Senator JORDAN. Thank you very much, Mr. Datt.

Senator NEUBERGER?

Senator NEUBERGER. Yes.

I was interested in your last statement, that farmers adhere strictly to the recommendations for the proper use of agricultural chemicals and drugs.

Do you recall the cranberry episode of a few years back? Was that the fault of the labeling or was it the fault of the farmer for not doing the spraying according to the directions on the label?

Mr. DATT. Well, from my understanding of the situation, this particular chemical was probably used at the wrong time. If the directions had been followed, there probably would not have been any difficulty. So I expect in this sense it was the responsibility of the farmer.

Senator NEUBERGER. Consequently, no matter what law we pass or what happens, there is still the human element, then—that the farmer is going to have to be responsible, is he not?

Mr. DATT. Certainly, we agree with this, 100 percent. One of the things we tried to do in the last 5 or 6 years has been to intensify our educational efforts among our farmers. That is, they do have a responsibility to use these agricultural chemicals properly. I would say that in 99 times out of 100, they do adhere to the directions. But we always probably will have some who cannot read or don't care, or for some reason don't do what it says on the label.

Senator NEUBERGER. So, if we do have a law setting up standards and requirements, then this really puts the responsibility pretty much on the farmer, that he live up to the law, does it not?

Mr. DATT. That is the current situation, and that is the way the law is today. He has a responsibility to use them properly.

Senator JORDAN. About that same time, Senator, they had this problem—this matter of the chicken feed. I will have to say HEW sort of loused that deal up a little bit. They condemned a lot of chickens that never had that in their food. But that is a current thing.

Senator NEUBERGER. I don't think it is a panacea, though, merely to pass a law like this, unless we coordinate it with some educational program, as your organization says you will, because you still, in spite of all the labeling need this attention to the individual farmer's understanding of the laws and of the use of agricultural chemicals and drugs. It just shows that the human element is there. But, of course, we have laws to say that people should not speed, too, and people get killed by speeding. But we have to set up standards, I think, for it.

But I am interested that a big farm organization is supporting the legislation, because there is a rumor current through the country that the Federal Government is going to step in and prevent them

from growing crops, and try to deter the great agricultural business of this country. So I am delighted that you are supporting this.

Mr. DATT. I would say in the last 10 years we have really intensified our efforts in this area. And among farmers today I think there is a greater recognition that they do have a responsibility to use these agricultural chemicals and drugs properly—much more so than it was 10 years ago. And I am sure as time goes on, they will become more responsive.

Senator NEUBERGER. Thank you.

Senator JORDAN. That concludes your testimony, Mr. Datt?

Mr. DATT. Yes, sir.

Senator JORDAN. Thank you very much. We are glad to have your testimony. You are a fine organization.

Mr. Brinkley?

Mr. Brinkley is president of the National Agricultural Chemicals Association.

Mr. Brinkley, I suppose you represent the people who manufacture these drugs.

Mr. BRINKLEY. Yes, sir.

Senator JORDAN. Insecticides, and so forth and so on.

Please give your name and all the information pertaining to yourself and your associate with you.

STATEMENT OF PARKE C. BRINKLEY, PRESIDENT, AND ROBERT L. ACKERLY, COUNSEL, NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION

Mr. BRINKLEY. Thank you, sir.

Mr. Chairman, Senator Neuberger, accompanying me is Mr. Robert L. Ackerly, of the firm of Cummings and Sellers, a law firm here in Washington. They are our general counsel and our corporate secretary.

Senator JORDAN. Thank you, sir.

Mr. BRINKLEY. And I brought Mr. Ackerly along to help answer some questions if you have some following that he might answer better than I could.

Senator JORDAN. Fine, thank you, sir.

You may proceed.

Mr. BRINKLEY. My name is Parke C. Brinkley. I am president of the National Agricultural Chemicals Association. This association was formed in 1933 as a nonprofit trade association to promote and represent the interests of manufacturers and formulators of agricultural pesticides and related chemicals. The 114 member companies of this association produce 90 percent of the basic and 85 percent of the formulated agricultural pest control chemicals produced in the United States. I am presently completing my first year of service with this association; however, in my former position as commissioner of agriculture for the Commonwealth of Virginia, I had occasion to know the association and its work for the industry. The association has always conducted its affairs in a manner consistent with the public interest and with an attitude of cooperation with the regulatory agencies of the Federal, State, and local governments.

In the middle 1940's, when the present Federal Insecticide, Fungicide, and Rodenticide Act was being considered by the Congress, this association actively supported it. Later, this association had the opportunity to help develop and support the Miller pesticide residue amendment to the Federal Food, Drug, and Cosmetic Act, which regulates and limits the allowable residue of pesticide chemicals of raw agricultural commodities. Again in 1959, when the scope of the Federal Insecticide, Fungicide, and Rodenticide Act was enlarged by act of Congress, this association took an active part in developing and supporting the amendment.

Our comments and views on S. 1605 are submitted to the committee this morning in a sense of cooperation with the committee and the Department of Agriculture in improving the Federal Insecticide, Fungicide, and Rodenticide Act.

We will submit with this statement some amendments which we believe will clarify the procedures provided in the bill, and with these amendments we support and endorse S. 1605.

This bill would accomplish two primary changes in existing law:

First, the Secretary of Agriculture will be authorized to require the Federal registration number of a pesticide to appear on the label. Each product which is registered by the Department of Agriculture receives a registration number. Existing law prohibits any reference on the label or in the labeling to the registration of the product by the Department of Agriculture.

This association has for several years urged that the law be amended to authorize the Secretary to require or at least permit the registration number to appear on the label. This has become more important since the approval of the Miller pesticide residue amendment to the Federal Food, Drug, and Cosmetic Act. The appearance of the Federal registration number on the label will assure growers and users that the product has been registered by the U.S. Department of Agriculture.

Registration of a pesticide intended for use on growing crops is also subject to the approval of the Food and Drug Administration. That agency establishes tolerances for residues of the pesticide chemical on raw agricultural commodities. The Department of Agriculture requires directions for use on the label, which if followed, will either leave no residue on the crop at the time of harvest, or a residue which is within lawful limits of the tolerance for the pesticide chemical. We think it highly desirable that growers be advised at the time of purchase that the product has been registered with the Department of Agriculture and that the Food and Drug Administration has established a tolerance for any residue that will remain on the crop. The appearance of the registration number on the label is a good way of accomplishing this.

There are some hazards to the industry in this feature of the bill. At the present time, 47 States require registration of pesticides in addition to the U.S. Department of Agriculture. The States generally follow the pattern of the Federal act and regulations. If the States should decide to require their registration numbers on the label in addition to the Federal number, the industry could be faced with printing 48 different numbers on a label. This would be impossible with many packages. It would also be quite unneces-

sary. We suggest, therefore, that the committee report on this bill emphasize that the purpose in allowing the Secretary to require the registration number to appear on the label is to give assurance to growers that the product has been registered by the U.S. Department of Agriculture, and to the extent necessary has been approved by the Food and Drug Administration for use on the crops listed on the label. If this point is made clear, perhaps the States will not find it necessary to adopt this requirement with respect to State registration numbers. Thus, while industry supports the principle that the Federal registration number appear on the label, it would be strongly opposed to the States following suit.

The second purpose of this bill is to eliminate registration under protest. Existing law, in section 4(c), provides that if it appears to the Secretary that an article which is submitted for registration does not comply with the requirements of the act, the Secretary is required to notify the applicant and give him an opportunity to make the suggested corrections. In the event the applicant does not agree with the Secretary that the corrections are necessary, the applicant may request that the Secretary register the article under protest. This registration is accompanied by a warning from the Secretary of the apparent failure of the article to comply with the act. Registration of an article is not a defense to any of the prohibited acts set forth in section 3 of the law.

If the Secretary feels that a product registered under protest does not comply with the act, he is free to institute a seizure proceeding to have the product condemned.

S. 1605, in eliminating registration under protest, would substitute a procedure for judicial review of the Secretary's action with respect to the registration of such an article.

A procedure has been developed under the Miller pesticide residue amendment, the food additives amendment and the color additives amendments to the Federal Food, Drug and Cosmetic Act to provide an applicant an opportunity for objective review of data and other material by an advisory committee if the Secretary does not agree with the applicant's evaluation of the data submitted. A similar procedure is provided in S. 1605 with respect to registration under the Federal Insecticide, Fungicide, and Rodenticide Act. If the Secretary of Agriculture should not agree with an applicant that an article should be registered, the bill provides that the applicant may request the issue be referred to an advisory committee to be appointed by the National Academy of Sciences. After the advisory committee has reviewed the data and material filed in support of the application, the committee is required to report its recommendations to the Secretary who thereupon must issue an order with respect to the registration of the article based not solely on the recommendations of the advisory committee but on an evaluation of all the data before him, including the recommendations of the advisory committee.

The bill permits an opportunity for a hearing if objections are filed to the Secretary's order and for judicial review of the final action of the Secretary with respect to the application for registration through a procedure which experience has shown functions well in this area.

One weakness in registration under protest has been that the burden of proof with respect to the Secretary's action is shifted to the Secretary, in a court proceeding. Under this bill the burden of proving that the article complies with the requirements of the law remains with the applicant or registrant throughout the entire administrative and judicial procedure.

After careful review of S. 1605, this association has prepared a few amendments which it would like to submit with a request that these amendments be approved by the committee when it reports the bill to the Senate. The amendments in detail are attached to my statement. For the most part they deal with procedural matters, clarifying some of the procedures set forth in the bill. A detailed explanation is also attached and accompanies the amendments.

These amendments establish time limits within which the Secretary must act at certain stages of the administrative procedure and follow the pattern adopted by Congress in the Miller pesticide residue amendment, food additives amendment, and color additive amendments to the Federal Food, Drug, and Cosmetic Act. One amendment also adopts the standard of judicial review approved by Congress in the food additives amendment and adopted by reference in the color additive amendments and the Federal Hazardous Substances Labeling Act.

In 1957 and 1958 the Congress examined the scope of judicial review of administrative hearings where the administrative hearings involved a wide range of scientific judgment. The report of the House Committee on Interstate and Foreign Commerce, H.R. 2284, 85th Congress, July 28, 1958, explains the committee's conclusions in the following excerpt:

The committee has given long and careful thought to the problem of the scope of judicial review under this legislation. This problem was discussed exhaustively by several witnesses, including a Federal judge who testified on behalf of the Judicial Conference of the United States.

The committee feels that the Secretary's findings of fact and orders should not be based on isolated evidence in the record, which evidence in and of itself may be considered substantial without taking account of contradictory evidence of possible equal or even greater substance.

The bill provides that the reviewing court shall not sustain the order of the Secretary if he failed to base such order upon a fair evaluation of the entire record at such hearing, or if he failed to include in such order a statement setting forth in detail the findings and conclusions upon which the order is based. The court must sustain the findings of the Secretary with respect to questions of fact if based upon a fair evaluation of the entire record.

The Senate Committee on Labor and Public Welfare endorsed the position of the House Committee in Senate Report 2422, 85th Congress, August 18, 1958. The committee report states in part:

Manufacturers of food and of food additives have manifested concern that under an administrative type of control over the use of food additives, such as is provided by H.R. 13254, it would be possible for the institutional decisions of the Secretary of Health, Education, and Welfare to be based, for example, more upon the personal convictions of scientists employed by the Food and Drug Administration regarding the safety of an additive than upon the inferences fairly to be drawn from the scientific evidence of record. H.R. 13254 provides that orders regarding the use of food additives must "be based upon a fair evaluation of the entire record." The committee has endeavored to prescribe a new statutory criterion requiring that a high standard of fairness be observed in administrative rulemaking under this bill. Personal attitudes or preferences of administrative officials could not prevail on the basis of being supported by substantial evidence picked from the record without regard to other evidence of probative value in the record.

If any questions should develop with respect to the suitability or propriety of these amendments or their purpose, we would be glad to discuss them in detail with the committee or with members of the committee staff. We believe that they are sound and will improve and promote the purposes and objectives of the bill.

We appreciate the opportunity to appear before the committee. We endorse and support the principles and objectives of this bill. We believe that this substitute procedure for registration under protest is in keeping with modern developments of administrative and judicial procedure. We assure the committee of the complete cooperation of this industry in the continued enforcement of these provisions, if they are approved by the Congress.

Now, I have these amendments, Mr. Chairman—the amendments plus an explanation of the suggested amendments that are attached to our statement.

(The attachment referred to follows:)

SUGGESTED AMENDMENTS TO S. 1605

Amendment No. 1

Page 2, line 18, before the word "cancel" insert the words "suspend or".

Amendment No. 2

Page 3, line 7, delete the period after the word "Secretary" and insert in lieu thereof a comma and the following words, "or in the alternative the applicant or the registrant may file objections to such notice and request a public hearing thereon. If a petition is not filed within thirty days requesting reference to an advisory committee or if a request for a public hearing is not filed within the time allowed for such filing, this notice shall become the final action of the Secretary with respect to the application or the registration."

Amendment No. 3

Page 4, line 2, delete "in" and insert in lieu thereof the word "of".

Amendment No. 4

Page 4, lines 10 and 11, delete the words "make a report and recommendation to the Secretary as to the registration of the article." and insert the following, "submit a report and recommendations to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations."

Amendment No. 5

Page 4, line 13, after the word "shall" insert a comma and the words "within ninety days after receipt of the report and recommendations of the advisory committee,".

Amendment No. 6

Page 4, line 16, delete the words "Any person adversely affected thereby" and insert in lieu thereof the words "The applicant for registration, or registrant,".

Amendment No. 7

Page 4, line 17, after the word "may" insert the words "within sixty days from the date of the order of the Secretary,".

Amendment No. 8

Page 5, line 9, after the word "shall" insert the words "evaluate the data and reports before him,".

Amendment No. 9

Page 5, line 20, after the word "until" strike the remainder of that sentence and insert in lieu thereof the following, "a public hearing is held, or where no hearing is requested until the action concerning registration of the product becomes final."

Amendment No. 10

Page 7, line 10, delete the words "by substantial evidence when considered on" and insert in lieu thereof the following, "by a fair evaluation of".

EXPLANATION OF SUGGESTED AMENDMENTS BY PARKE C. BRINKLEY

Amendment No. 1

This amendment merely completes the descriptive introduction to the procedures to be followed in the event of a denial, suspension, or cancellation of a registration. The words "suspend or" which will be added by this amendment were apparently inadvertently omitted.

Amendment No. 2

This amendment provides that if the applicant or the registrant does not request further proceedings following a denial or suspension of a registration by the Secretary, the Secretary's action shall become final. This will alleviate the necessity for the Secretary to issue a subsequent order and permit the Secretary's initial action to become final upon the expiration of the time period if the applicant or registrant desires no further proceedings to be held.

Amendment No. 3

This corrects a typographical error.

Amendment No. 4

The purpose of this amendment is to require an advisory committee to submit with its report a statement of the reasons or basis underlying its recommendations. This will be helpful both to the Secretary and to the registrant or applicant.

Amendment No. 5

This amendment requires the Secretary to act upon the application or registration within 90 days after the receipt of the report of the advisory committee. The bill does not provide a time within which the Secretary must act and it is felt that some time limitation is desirable.

Amendment No. 6

This amendment is for clarification. The phrase "Any person adversely affected thereby" would be in this instance only the applicant or the registrant and substitution of the words "The applicant for registration, or registrant." clarifies this sentence in the bill.

Amendment No. 7

This amendment places a 60-day time limit within which a public hearing may be requested following the order of the Secretary upon which the hearing is to be held. If a hearing is not requested within 60 days, the Secretary's order becomes final.

Amendment No. 8

The purpose of this amendment is to make clear that the Secretary is not bound by the recommendations of the advisory committee but should evaluate the entire record before issuing his order following a public hearing, if one is requested.

Amendment No. 9

This amendment is to clarify the procedure with respect to the confidentiality of data submitted in support of a registration. This amendment removes the confidentiality of such data when a public hearing is held or when the action of the Secretary becomes final.

Amendment No. 10

This amendment provides that in the event of an appeal to the U.S. Court of Appeals the findings of the Secretary with respect to questions of fact shall be sustained if supported by a fair evaluation of the record as a whole. The bill presently provides that the findings shall be sustained if supported by substantial evidence. The scope of judicial review recommended by this amendment, that is a fair evaluation of the record as a whole, is the scope of review provided in the food additives amendment and color additive amendments to the Federal Food, Drug, and Cosmetic Act and in

the Federal Hazardous Substances Labeling Act. This amendment then follows the scope of review provided by the Congress in the three most recent enactments in this field.

Senator JORDAN. How long have you had those amendments? Has the Department of Agriculture had those?

Mr. BRINKLEY. Yes, sir, they have.

Senator NEUBERGER. There is a little overlapping. I don't know whether you have seen them Mr. Brinkley. The recommendations of the Secretary—he recommends some amendments at the same places you do. And that one on amendment No. 2, on page 3, line 7, seems to be pretty much in agreement, except for the actual verbiage. Where the Secretary recommends on page 3, line 7, insert the following new sentence:

“The Secretary on his own motion may at any time refer such a matter to an advisory committee”—which is just about what yours seems to say.

Is that true?

Mr. BRINKLEY. Yes.

Senator NEUBERGER. I notice, since I had not seen your amendments before, that there is quite a lot of similarity.

Amendment No. 9, page 5, line 20—this one I am not quite sure of.

After the word “until,” insert—“a public hearing is held.”

The Secretary recommends that the phrase, “Final action is taken” be deleted, and that the language be “The Secretary issues his order concerning registration.”

In other words, you are putting more emphasis on the public hearing, and he is putting more emphasis on the administrative position of the Secretary.

Would you have any objection to it being in the hands of the Secretary?

Mr. BRINKLEY. Senator, I don't follow that as well as Mr. Ackerly might. Let him comment on that.

I think there is no real difference of opinion.

Senator NEUBERGER. It just seems to me that his recommendation is helpful for purely administrative reasons—but that you are both achieving the same ends.

It gives him a little more leeway to handle this thing if there is a question about it.

Have you seen the Secretary's language?

Mr. BRINKLEY. Yes, ma'am.

Senator JORDAN. May I ask at this time—Dr. Clarkson, do you have a copy of these amendments?

Dr. CLARKSON. Yes, sir.

Senator JORDAN. Come around and have a seat over here. We certainly want your comments, either now, or you may furnish them later.

Senator NEUBERGER. I think the results you are both seeking are the same. But I would like to eliminate all this matter of holding hearings if you can put it in somebody's hands.

Senator JORDAN. Senator Neuberger, I think maybe Dr. Kirk might have something he would like to add in here, too.

Do you have a copy of those amendments?

Mr. KIRK. Not Mr. Brinkley's; no, sir.

Senator JORDAN. I think that he should be supplied a copy of those amendments. Wouldn't you think so? So that they might make comments to the subcommittee, so they could be studied, and have your thoughts.

Do you have any extra copies of those?

Mr. BRINKLEY. Yes, sir, we brought them. And these were offered to the House committee during the hearings. They are exactly the same. Food and Drug has had the opportunity of seeing them.

Senator JORDAN. Go right ahead, sir. I didn't mean to interrupt you. But I wanted everybody to have a chance to be heard who is interested in this.

Mr. BRINKLEY. As Senator Neuberger has said, I don't think there is any difference between us in our thinking on this. It might be a matter of words.

Mr. Clarkson and Mr. Ackerly, both of them having been trained in the law, could probably discuss the wording better than I could.

Dr. CLARKSON. Mr. Chairman, I think Senator Neuberger expressed it very well—that the Department's amendments and the industry amendments are basically for the same purpose, which is to perfect, or to smooth out some of the provisions for administration.

We have looked over their amendments. They propose some alternate language from ours. It might be wise to go over these in detail with the committee counsel. We have no objection to any—except the last one. Item 10 of their amendments, which refers to an item on page 7, having to do with review by the court—we feel that the language now in the bill, which states that the findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report or recommendation of an advisory committee, is preferable.

The amendment as offered here would change that to read:

Findings of the Secretary with respect to questions of fact shall be sustained if supported by a fair evaluation of the record as a whole, including any report or recommendation of an advisory committee.

Now, I might suggest that the precedents for this in an amendment to the Food, Drug, and Cosmetic Act related to administrative actions, rulemaking by the Secretary, whereas the provisions of this act that we are referring to have to do with the review of the record by the U.S. Court of Appeals. The Department's General Counsel feels that the language in the bill as written is preferable, and in line with the precedents.

Senator NEUBERGER. I noticed that one right away, because it seemed to me that in the present bill—the wording, “substantial evidence,” is better for everybody. It asks for evidence rather than an evaluation. I would think it would put more responsibility upon the Secretary, does it not?

Mr. BRINKLEY. This is court review, is it not?

Mr. ACKERLY. That is correct.

Mr. BRINKLEY. This is court review. Our contention is that when it goes before the court that the court should have all of the record, and should make the decision based upon all the information that

is available, rather than possibly the taking of a portion of the record to substantiate a particular fact or finding.

Dr. CLARKSON. If the Chair would like, General Counsel of the Department would be glad to submit a statement in regard to this matter.

Senator JORDAN. We would be glad to have that. And, any additional information you would like to have pertaining to this point from your counsel, Mr. Brinkley, we would be glad to have, also.

Mr. BRINKLEY. Thank you, sir.

Senator JORDAN. Senator Neuberger, do you have any other questions?

Senator NEUBERGER. No. The crux of this bill, of course, is the registration question. I think this is the important thing. We don't care too much about that labeling number one way or the other. But I think this is an important question, insofar as I can see.

Now I would like to add that I am delighted that the industry is so cooperative.

I think your suggestion is very good—that they work together on getting this language agreeable to both sides.

But I know that it makes it easier to administer if we don't fool too much with the Secretary's ability to do it. And I am sure that would be agreeable to you, Mr. Brinkley.

Senator JORDAN. I can readily understand where the 50 States might have a labeling law, and it would be almost impossible to have two different numbers and print 50 different kinds of labels. That would have to be worked out.

I would like to ask you, Mr. Brinkley—is there any opposition or any serious opposition from any of the manufacturers to this bill?

Mr. BRINKLEY. No, sir.

Senator JORDAN. I have not heard any. I was just wondering.

Well, that is a very fine attitude that the manufacturers are taking. It is a very important problem, because insecticides, and all these chemicals included in this bill are becoming more and more important to agriculture, in every phase of agriculture, than ever before.

They have learned—pretty well—to throw away the plow for weeding and kill it with chemicals, which is revolutionizing agriculture as I knew it when I was a boy. I have not used a hoe in a long time, thank goodness—I never did like it.

Mr. BRINKLEY. Well, I have used one a good many days, Senator, and I appreciate the fact that these chemicals came along about the time that farm labor became so high we could not afford to use a hoe any more. That saved me and my farming in eastern Virginia. Senator Neuberger said she did not know anything about peanuts. I was born and raised a peanut farmer, Senator. I do know a little bit about peanuts, and I have worked them a good many days with a hoe. And these materials are a tremendous benefit.

I think, Senator, if I may impose for just another minute upon your time, and that of Senator Neuberger—that as I pointed out, you will find that the industry has supported actively all of the legislation that it is regulated under now. We have two sister associations—the Manufacturing Chemists Association and the Chemical Specialties Manufacturing Association. Both of them are supporting this

legislation. The MCA has not filed a statement or taken an active part.

The CSMA, as we refer to it—the Chemical Specialties Manufacturing Association, did appear before the House Committee.

Senator JORDAN. That information is available to us.

Mr. BRINKLEY. Yes, sir. And they have submitted a statement. They are not here because they are having a board meeting in Chicago now, and could not be here. But they are supporting the legislation, as they have in the past.

They are the ones who represent the household manufacturers, or the manufacturers of household products.

Senator JORDAN. Yes, I have that statement here from the Chemical Specialties Manufacturing Association. And I will insert this in the record at this point, or to follow your remarks.

Mr. BRINKLEY. Yes, sir, that will be fine.

(The statement referred to follows:)

STATEMENT FILED BY JOHN A. RODDA, MEMBER, BOARD OF DIRECTORS, CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION, NEW YORK, N.Y.

This statement is submitted on behalf of the Chemical Specialties Manufacturers Association, a nonprofit trade association, incorporated in 1914. The 500 members of this association represent a major segment of the producers and distributors of chemical specialty products for general household use. The association is divided into six divisions, one of which is the insecticide division. S. 1605 proposes to amend the Federal Insecticide, Fungicide, and Rodenticide Act, under which the products of the members of this association are registered. The association, thus, has a direct interest in this bill.

The position of the pesticide industry generally on this bill has been stated to the committee by Mr. Parke C. Brinkley. Mr. Brinkley has explained, particularly, the impact of the bill on the agricultural chemical industry. This association joins with the National Agricultural Chemicals Association in supporting S. 1605, and also endorses the amendments which Mr. Brinkley has submitted to the committee. The purpose of this statement is to explain, briefly, the possible impact of this bill on the small package or household and garden segment of the industry.

Most insecticides intended for use around the household and in the garden are sold in small packages. The available label space on these containers is limited. At the present time, to comply with the Federal Insecticide, Fungicide, and Rodenticide Act, the label must contain detailed directions for use, a warning or caution statement of any hazards in the handling and use of the product, an ingredient statement in the form required by the Department of Agriculture, a statement of the net contents, and the name and address of the manufacturer, as well as the trade name of the product. The Department of Agriculture has recently redrafted some of its regulations which, in part, require a reference to the directions and precautions to appear on the front panel. Several States, in the enforcement of their weights and measures laws, now require the statement of net contents to appear on the front of the container. We are, therefore, somewhat concerned with the provision of this bill which would authorize the Secretary of Agriculture to require the registration number of the product to appear on the label.

The purpose of this requirement, as we understand it, is primarily to assure growers of agricultural crops that a pesticide has been registered with the Department of Agriculture, and that application of the pesticide, in accordance with the label directions, will result either in no residue of the pesticide at the time of harvest or, if a residue remains, that it will be present in an amount within the official tolerances established by the Food and Drug Administration for such a residue. As the bill is drafted, we interpret it to mean that the Secretary of Agriculture would not be required to insist upon the registration number on the label of every pesticide. It is possible that the Secretary will determine that since the primary purpose of this section of the bill would not have application to household insecticides, the registration number need not appear on these small containers. If the Secretary deter-

mines that the registration number should appear on these products, we would anticipate that the requirement would be limited to a number preceded by some brief designation, such as "U.S.D.A. Reg. No." Space can be found on most labels for a brief statement of this type; however, we are concerned as to the attitude that the 47 States, who also register these products, will take with respect to requiring the State registration number on the label. It would be physically impossible to list a whole series of registration numbers on these small containers.

We request, therefore, that the committee report on this bill point out the seriousness of this problem, and the intent of the committee that products may move freely in interstate commerce with only the Federal registration number on the label.

With respect to the remaining sections of this bill, which would delete registration under protest, and substitute an administrative hearing procedure, our position is that since the bill affords the industry an opportunity of administrative and judicial review of decisions on registration, we support this part of the bill also. Registration under protest has always been viewed by this association as a method of protection against arbitrary action by an administrative official, and a method of obtaining judicial review. We have always understood that a product registered under protest is subject to seizure at any time without notice if the Department of Agriculture decides that the product does not comply with the act. Registration under protest has been used sparingly, which is a tribute to the way in which the industry has cooperated with the U.S. Department of Agriculture in the enforcement of this act.

Substituting an advisory committee procedure along with opportunity for public hearing and judicial review of the decisions of the Secretary under this law is undoubtedly a more orderly and more satisfactory procedure than registration under protest. These procedures will be time consuming and cumbersome, but we recognize that this is necessary where evaluation of research data is required and expert judgments made based upon the results of experimental data. The final decision, of course, rests with the Secretary following exhaustion of the advisory committee and public hearing procedures. The Secretary will thus not be bound by the report and recommendations of the advisory committee, but his judgment will be based upon the entire administrative record. If an appeal is taken to the court, the court should also base its review on a fair evaluation of the administrative record certified to the court by the Secretary. We believe that the bill with the amendments submitted by Mr. Brinkley satisfies these principles.

Once again we do see the possibility of a serious problem at the State level if this procedure should be adopted by the States. A great majority of the products of this association move in interstate commerce and uniformity of requirements between the Federal and State Governments is essential. We are hopeful, therefore, that the State governments will accord great weight to the action of the Secretary of Agriculture under this amendment and accept for registration at the State level products which are approved by the Secretary for registration by the Federal Government.

We endorse the principles and objectives of this bill. No law is static and an important regulatory statute such as the Federal Insecticide, Fungicide, and Rodenticide Act should be subject to constant review and should be amended when necessary to meet changing conditions. We believe that these amendments will improve the enforcement of this law and strengthen the bill, while at the same time preserving and protecting the basic rights of the regulated industry. The committee can be assured that this industry will continue to cooperate fully with the Congress and with the Department of Agriculture in the enforcement of this law and in the implementation of these amendments.

Senator JORDAN. Do you have any further remarks, sir?

Mr. BRINKLEY. No, thank you.

Senator JORDAN. Senator Neuberger?

Dr. Clarkson?

Is there any other witness?

We appreciate very much all of you being with us. Your testimony has been very, very fine and direct.

We will leave the record open until Friday of this week to file any other statements.

You may want to file some answers, Dr. Clarkson, to some of these.

Dr. CLARKSON. On this item 10, I will send up a statement.

Senator JORDAN. If you have it brought over, it will be included in the record—or any statements that you or any of the manufacturers might want to put in, we will be glad to have in the record.

U.S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., September 13, 1963.

HON. B. EVERETT JORDAN,
Chairman, Subcommittee on Agricultural Research and General Legislation,
U.S. Senate, Washington, D.C.

DEAR SENATOR JORDAN: In compliance with your request during the hearing on S. 1605 on September 10, 1963, the Department of Agriculture submits the following comments on amendment No. 10 to the bill proposed by the National Agricultural Chemicals Association.

This suggested amendment would provide that in case an appeal is taken to the U.S. Court of Appeals from the determination of the Secretary of Agriculture as to the eligibility of an economic poison for registration, the findings of the Secretary with respect to questions of fact would be sustained if supported by a "fair evaluation" by the court of the record as a whole. S. 1605 provides that such findings would be sustained if supported by "substantial evidence" when considered on the record as a whole. The "substantial evidence" standard of review is provided for in the "pesticide chemicals" provisions of section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a). Section 10 of the Administrative Procedure Act (5 U.S.C. 1009) also uses the "substantial evidence" criterion for review of agency action. Prior to the Administrative Procedure Act it was held that administrative determinations were to be sustained if there was evidence to support them. *Swift & Co. v. United States*, 316 U.S. 216 at 231 (1941); *Adams v. Mills*, 286 U.S. 397 at 410 (1932). Some cases required "substantial evidence" to support administrative findings, e.g. *Midwest Farmers v. United States*, 64 Fed. Supp. 91 at 96 (D.C. Minn. 1945). The "fair evaluation" provision provides a different standard than that of "substantial evidence" and would apparently contemplate that the court would weigh the evidence and reach its own conclusion as to the facts established by the whole record. (See Senate Report 2422 on H.R. 13254, 85th Congress (Food Additives Amendment of 1958) in volume 3, U.S. Code, Congressional and Administrative News, p. 5306). We believe this would require the court to pass on factual issues on which the Secretary of Agriculture has greater expertise and that such expertise should be accorded the recognition in the Federal review process which the "substantial evidence" standard affords. It also appears that the Congress in adopting the "fair evaluation" standard in the food additives amendment to the Federal Food, Drug, and Cosmetic Act recognized that the proceedings to which it was there applied were rulemaking proceedings (Senate Report 2422 on H.R. 13254). There is no precedent so far as we know for use of that standard for review of adjudicatory actions such as determination of the eligibility of an economic poison for registration. Therefore, we oppose suggested amendment No. 10.

We appreciate this opportunity to submit our views on this matter.

Sincerely yours,

EDWARD M. SHULMAN,
Acting General Counsel.

Senator JORDAN. Thank all of you very much for being with us. (Whereupon, at 11:10 a.m., the subcommittee recessed, subject to the call of the Chair.)

(Additional statements filed for the record are as follows:)

WASHINGTON, D.C., September 6, 1963.

HON. B. EVERETT JORDAN,
Chairman, Committee on Rules and Administration,
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is to set forth the interest of the National Grange in S. 1605 relating to the registration of pesticides under protest. The National Grange urges the committee to reject in total those amendments offered by the Fish and Wildlife Service of the Department of the Interior and

by the Food and Drug Administration of the Department of Health, Education, and Welfare. We feel these amendments would result in a distortion in the legal responsibilities of government as related to the health of this Nation and its food supply.

We support the bill itself and those amendments offered by the U.S. Department of Agriculture and the National Agricultural Chemicals Association. We note that the U.S. Department of Agriculture does not support amendment No. 10 of the National Agricultural Chemicals Association. Our review shows this to be a legal question involving interpretation of court action, and we suggest this matter be weighed carefully by all members of the committee.

For some time the National Grange has been disturbed by the attitudes and attempts by some of those supporting fish and wildlife interests to put the values of these resources, important as they are, ahead of an abundant, wholesome food supply; and a capability enabling farmers to continually increase the efficiency of production is of first magnitude. We support the upgrading and conservation of this Nation's fish and wildlife resources—but not in a manner which threatens to jeopardize our food supply.

We respectfully invite you to present our views to the members of your committee during discussions on this bill.

Respectfully yours,

HERSCHEL D. NEWSOM,
Master, National Grange.

STATEMENT FILED BY RICHARD T. O'CONNELL, SECRETARY, NATIONAL COUNCIL OF FARMER COOPERATIVES

I am Richard T. O'Connell, secretary, National Council of Farmer Cooperatives. The national council is a federation of farmer cooperatives with several members manufacturing agricultural chemicals and a substantial number of member organizations distributing chemicals to nearly 3 million farmers.

We appreciate this opportunity to express our views on S. 1605.

The national council supports the objectives of S. 1605 for two principal reasons: (1) the statutory inclusion of an advisory committee to assist the Secretary in evaluating data, and the selection of its members from the National Academy of Sciences, will give the broad and objective analysis of economic poisons which we believe essential for their continued effectiveness in agriculture; and (2) the eliminating of the sale of economic poisons "under protest" will substantially remove the potentially adverse public relations position the farmer is placed in when difficulties arise.

However, there are several amendments we wish to recommend to strengthen the measure.

We will briefly discuss each position.

ADVISORY COMMITTEES STIMULATE A BROAD SCALE ANALYSIS

It is our belief when adverse situations arise from the use of economic poisons in the production and marketing phases of agriculture, the farmer generally bears the brunt of the unfavorable publicity and frequently the financial damage as well. We are certain the committee recalls the situations in the cranberry and poultry industries several years ago. The incidents caused a temporary decline in the per capita consumption of these two products and posed a severe financial reversal for farmers until assistance was received from the Government.

We believe the twin tragedies which occurred in cranberries and poultry, although not involving sales "under protest," could have been eliminated or the impact sharply reduced if an advisory committee such as suggested in this measure had been in effect prior to the registration of the chemicals involved and had been operating during the crisis.

The fundamental advantage of employing an advisory committee of competent members of the scientific community is the opportunity to thoroughly analyze, from all aspects and viewpoints, research and other data before a decision is reached. The advisory committee can weigh and judge the conflicts that seem to exist when two or more scientists study the same problem. The committee can also act as a clearinghouse for research work as well as an important adjunct to the Secretary in his decisionmaking processes. We support this procedure.

SALES "UNDER PROTEST" SHOULD BE ELIMINATED

Much of the publicity furor in recent months has, as this committee is well aware, been concentrated on the sale of economic poisons "under protest." We believe the publicity has far overshadowed the beneficial and effective uses of agricultural chemicals. It can easily be considered as a thorn in the side of agriculture, and a strong weapon in the hands of those who wish to see the reduction or elimination of the use of chemicals in agricultural production and marketing.

Therefore, it is imperative that agriculture remove the stigma of sales "under protest" so that the public can judge the effectiveness of those products approved by the USDA as safe.

We believe the removal of sales "under protest" will cause little if any economic hardship on agriculture or the manufacturers of these products. It is our understanding that 7 products are currently being sold "under protest" out of about 50,000 products in use and under approval by the USDA.

AMENDMENTS TO STRENGTHEN THE MEASURE

The amendments we recommend are largely to clarify and improve the procedures contained in S. 1605 and do not alter the objectives of the proposed legislation.

On page 3, line 7, we recommend the deletion of the period after the word "Secretary" and insert in lieu thereof a comma and the following words, "or in the alternative the applicant or the registrant may file objections to such notice and request a public hearing thereon. If a petition is not filed within thirty days requesting reference to an advisory committee or if a request for a public hearing is not filed within the time allowed for such filing, this notice shall become the final action of the Secretary with respect to the application or the registration."

The recommended amendment is an attempt to offer alternatives to the procedures the Secretary or the applicant may follow. We believe it is important that fair and equitable procedures be permitted for both the Secretary and the applicant in stating their cases, either privately or publicly. We also favor the inclusion of time limits, such as a specified number of days to complete actions. Time required to make a decision becomes a matter of judgment, but in most occasions a time limit stimulates and spurs the parties into concrete action. The use of the term "final action" by inaction is also good. This will give notice to both parties that after a stated amount of time has elapsed, the prior decision is the one that stands. This eliminates the possible confusion from two or more statements being rendered on the same subject.

On second recommended amendment is as follows:

On page 4, line 13, after the word "shall" insert a comma and the words "within ninety days after receipt of the report and recommendations of the advisory committee."

Our third amendment is on page 5, line 8. Delete the words "as soon as practicable" and insert in lieu thereof the words, "within ninety days."

Our reasons for the importance of time in expediting the decisions in these last two amendments are the same as we have stated earlier.

Our fourth and final amendment is on page 7, line 10. Delete the words "by substantial evidence when considered on" and insert in lieu thereof the following, "by fair evaluation of."

This amendment, in our judgment, establishes continuity where an advisory committee is employed in assisting the Secretary in evaluating the data supplied. It further reduces hasty judgment and narrow interpretation of research data which we believe has been a possibility in the past.

SUMMARY

The National Council of Farmer Cooperatives favors the passage of S. 1605, and preferably with our recommended amendments. We urge this committee to favorably report S. 1605 and actively support its passage in the Senate.

We appreciate this opportunity to express our views.



REGISTRATION OF ECONOMIC POISONS

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HEARINGS

LEGISLATIVE REPORTING

BEFORE THE

SUBCOMMITTEE ON DEPARTMENTAL
OVERSIGHT AND CONSUMER RELATIONS

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 6828, H.R. 6913, and H.R. 7336

AUGUST 21 AND 22, 1963

Serial Y

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REGISTRATION OF ECONOMIC POISONS

WEDNESDAY, AUGUST 21, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DEPARTMENTAL OVERSIGHT AND
CONSUMER RELATIONS OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1310, Longworth House Office Building, the Hon. Paul C. Jones (chairman of the subcommittee) presiding.

Present: Representatives Jones (presiding), Johnson of Wisconsin, Stubblefield, Abernethy, Matsunaga, Dague, Dole, and Beermann.

Also present: Representatives Matthews and Rosenthal.

Christine S. Gallagher, clerk.

Mr. JONES (presiding). The subcommittee will come to order.

This is a meeting of the Departmental Oversight and Consumer Relations Subcommittee of the House Committee on Agriculture.

We are here this morning to hear from witnesses who are interested in a number of bills that have been introduced to amend the Federal Insecticide, Fungicide and Rodenticide Act.

(The following bill, H.R. 6828 by Mr. Rosenthal, is similar to H.R. 6913 by Mr. Dingell and H.R. 7336 by Mr. Halpern:)

[H.R. 6828, 88th Cong., 1st sess.]

A BILL To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(z)(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C. 1958 ed., Supp. III, 135(z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), changing the period at the end of section 3.a.(2)(c) to a semicolon, and adding after section 3.a.(2)(c) a new provision reading as follows: "and (d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act".

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may require the modification of the claims or labeling of, or cancel the registration of, an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever

the Secretary determines that registration of an economic poison should be refused, or that an economic poison that is registered does not appear to warrant the claims made for it or that the article or its labeling or other material required to be submitted does not comply with the provisions of this Act, he shall notify the applicant for registration or the registrant of his determination and the reasons therefor. Within thirty days after service of such notice, the applicant for registration or the registrant may file a petition requesting that the matter be referred to an advisory committee to be appointed by the Secretary. Each such advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration in the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, make a report and recommendation to the Secretary as to the registration of the article. After due consideration of the views of the committee and all other data before him, the Secretary shall make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. Any person adversely affected thereby may file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objections and issue an order granting, denying, or canceling the registration or requiring the modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until final action is taken concerning registration of the product. Until such final action such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory

committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. Subsection 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f. (b)) is hereby amended by deleting the second proviso therein.

SEC. 6. Subsection 3.a. (1) and subsection 9.a. (1) (b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a. (a) (1), 135g. (a) (1) (b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered."

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment.

(The Department of Agriculture report on H.R. 6828 follows):

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 12, 1963.

HON. HAROLD D. COOLEY,
*Chairman, Committee on Agriculture,
House of Representatives.*

DEAR MR. CHAIRMAN: We wish to thank you for your letter of June 19, 1963, giving us the opportunity to report on H.R. 6828, entitled "A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes."

The bill would permit the labels of economic poisons registered under the act to bear the registration numbers and would authorize the Secretary of Agriculture to require by regulation that registration numbers appear on such labels. It would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or

canceling registrations, or requiring modification of claims or labeling of registered economic poisons. Provision would be made for referral of the question of the eligibility of an economic poison for registration to an advisory committee; for public hearing, if requested, with respect to the Secretary's order issued after consideration of the views of the committee and other data; and for judicial review of the order issued by the Secretary after such hearing.

In fulfilling its responsibilities under the act, this Department is hampered by a provision in the act which gives the applicant the right to demand and receive registration under protest when regular registration is denied, even though the denial is based upon a hazard to the public involved in its use. The net effect of a registration under protest is to shift the burden of proof from the applicant to the Department. Thus a chemical formulation not acceptable to the Department for registration might be marketed for an extended period on a "registration under protest" basis before proof of its harmfulness could be developed. The intent of H.R. 6828 is to eliminate registrations under protest and to give this Department authority to deny or cancel any registration or require modification of claims or labeling in any case, after opportunity for referral of the matter to an advisory committee and a public hearing, but with authority for immediate suspension of any registration when the Secretary of Agriculture finds that such action is necessary to prevent an imminent hazard to the public or any portion thereof.

This Department recommends enactment of the bill if the following changes are made:

In section 3 of the bill, page 3, line 7, after "Secretary.", insert the following new sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory committee." It is believed that this authority in the Secretary is desirable.

In section 3 of the bill, page 3, line 19, preceding the period, insert the following: "all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition". This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

The bill provides that all data submitted to the Secretary or an advisory committee shall be considered confidential until final action is taken concerning registration of the product. However, the bill also provides for such data to be included in the record at the public hearing provided for in the bill. To eliminate this apparent inconsistency, it is suggested that in section 3 of the bill, page 5, lines 20-21, the phrase "final action is taken concerning registration of the product." be deleted and the following be substituted therefor: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him." In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". It is contemplated that under this language the Secretary would be authorized to make such data available to other executive agencies that have an official interest.

Since the provisions of the act for registration under protest would be deleted by the bill, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bill become effective. However, to avoid any possible question in this respect, it is proposed that in section 7 of the bill, page 8, line 16, the following be inserted preceding the period: "and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate".

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

Mr. JONES. Our first witness this morning will be the Honorable Abraham Ribicoff, the Senator from Connecticut, former Secretary of the Department of Health, Education, and Welfare and a former colleague of some of the members of this committee.

We are very happy to have you here this morning and we are pleased to have the opportunity of hearing from you at this time.

STATEMENT OF HON. ABRAHAM RIBICOFF, A U.S. SENATOR FROM
THE STATE OF CONNECTICUT

Senator Ribicoff. Thank you very much, Mr. Chairman. It is a pleasure for me to be here.

I appreciate this opportunity to appear here this morning in support of H.R. 6828, H.R. 6913, and H.R. 7336. The sponsors of these bills and the subcommittee have done and are doing the Nation a real service by the speedy action that is being taken on this important legislation.

My comments will be brief, this morning, as I know you have many expert witnesses to hear in the next 2 hours. I do want to emphasize the importance of the legislation before you. Since its introduction two additional products have reached the market without satisfactory proof of safety—both were the so-called continuous-action lindane vaporizers which have never been proven safe for home use.

As you know, the bills would end the practice of protest registration whereby the manufacturer of a pesticide can market a product despite Department of Agriculture doubts as to its effectiveness or safety.

Fortunately, we have been able to avoid a national tragedy while this gap in consumer protection remained in the law. Only a very few products out of the thousands registered have been "protest registered" over the past 16 years. Even these have been too many and it is time to close the gap.

Despite our relatively good fortune in the past, the danger of an unsafe product coming on the market is always with us under existing law. We must remember that no manufacturer of a pesticide wants to put a harmful product on the market. He wouldn't be in business long. My concern is with the responsible manufacturer of such a product who has absolute faith in his product and whose research has turned up no dangerous side effect whatever. This man is a businessman—convinced he is right—and having good reason to believe so on the basis of what is known about the product at the time. He is confronted with a doubting Federal employee who shouldn't approve the product without adequate proof of its safety.

The policy of this Nation is, and should always be, that a pesticide should not come on the market until adequate proof of safety has been established and it should not be left for the public to play the role of guinea pig while the true facts of toxicity are brought out. Today, it is possible under the law to subject the public to that role when the Government is not satisfied with the manufacturer's proof of safety and yet lacks definite evidence of lack of safety. That gray area must be decided in favor of the public—the consumer. He should not be the testing ground. With the sole exception of the Federal Insecticide, Fungicide, Rodenticide Act of 1947, as amended, all our consumer protection laws are either based on this principle or proposals have been submitted to accomplish this. It is time this act, too, be brought into the 1960's.

As you know, protest registration was supposedly a technique to force a court review whenever the manufacturer and the Government disagreed on the safety or effectiveness of the product in question. What we should remember is that time often must elapse before a body of evidence is accumulated justifying a seizure action by the Government and a subsequent court case.

The proposed legislation rejects this archaic concept of consumer protection and substitutes a system under which the public's interest and a manufacturer's rights are protected. And this protection runs from the initial decision, through an advisory committee, through a hearing on the record, through judicial review.

In addition, the legislation requires that every pesticide formulation carry its official registration number on the label. In this way the public will be able to tell at a glance that the product on the shelf has satisfied the requirements of Federal law as to its effectiveness and safety when used according to the directions on the label.

This legislation is recommended by the President's Science Advisory Committee. It has been endorsed by the heads of the various affected Federal agencies, the regulated industry, and by every witness to appear before our Senate subcommittee now studying the problem of the use of pesticides. I know the cosponsors of S. 1605—Senator Pearson of Kansas, Senator Pell of Rhode Island, and Senator Javits of New York—join me in urging your favorable consideration of this important measure.

Mr. JONES. Thank you, Senator.

As I understand it, as you have pointed out in your statement, the Fungicide, Pesticide, and Rodenticide Act is the only act which does require different procedure than is required for some other products that are put on the market, like those covered by the Food, Drug, and Cosmetic Act and things like that?

Senator RIBICOFF. That is right. Drugs, color and food additives, and the like, require premarketing clearance. Proposals to extend this procedure to cosmetics and devices are now pending.

Mr. JONES. And this bill proposes to bring that field into conformity with the procedures that are followed as to other products?

Senator RIBICOFF. That is correct, Mr. Chairman.

Mr. JONES. Do you have any questions, Mr. Dole?

Mr. DOLE. Senator Ribicoff, I know that it probably takes some time before a court, for example, makes a final decision. Is there anything which can be done to speed up the time so the consumer may be certain products may or may not be safe?

Senator RIBICOFF. No. It depends upon the product, but you take the thalidamide situation. The manufacturer had faith in this drug and yet if we had a pesticide in the same situation the manufacturer of that pesticide could have put it on the market under protest.

To me, when we are dealing with any product that is potentially dangerous and potentially poisonous, all doubts should be resolved in favor of the consumer. Now I am sure that the industry representatives who will testify before you will indicate that industry recognizes this. The legitimate manufacturer, the manufacturer who has any responsibility to the public and to his stockholders and employees is not seeking this advantage.

They recognize that in the orderly procedures of the Department of Agriculture, there is no indication that there is too long a delay in getting the product approved. In 16 years there have only been some 25 or 30 products sold under protest registration, even though thousands upon thousands of products have been sent to the Department of Agriculture for approval. Yet this is a gap in the law which creates a potential hazard. I think we should close it. In talking

to manufacturer representatives of almost every major company they recognize that this is a loophole that should be closed, Congressman Dole.

Mr. DOLE. Is there any specific pesticide on which there is any particular concern?

Senator RIBICOFF. Well, basically, we are concerned with all of them. I mean at the present time we are in the process of conducting hearings on the whole problem of pesticides. It is a problem about which not enough is known. We are conducting extensive and patient hearings today before the subcommittee. The chancellor of the University of California, Davis Branch, is testifying right now. We have had scientists, we have had doctors, industry representatives—we will have the public—in an effort to determine where we should be going in this country in the whole field of pesticides. We have not come up with any firm conclusions. I do not think that we should until all of the testimony is in, but I do believe that before we are through with our Senate hearings we will have as definitive an understanding of departments and the potential hazards or potential safety of pesticides as has ever been gathered together in this country before.

Of course, as you know this matter was brought to the forefront through Rachel Carson's book "Silent Spring," which caused quite a furor and a great controversy. We are trying to determine who is right and who is wrong—is there a right, is there a wrong, what role should the chemical manufacturers play, what role should be played by the Government, what role should be played by the States.

It has been the thought of our committee that as we develop this program and this testimony, when we come across a problem that should be taken care of, we would recommend that it be done.

The first problem we came across was protest registration in which we recognized there was a loophole that should be closed immediately. And talking to the manufacturer representatives they agree that this is a loophole that should be closed. The Department of Agriculture recognizes this. I think that the public recognizes this. That is why this was the first recommendation to come out of our Senate hearings.

I doubt very much whether there will be any testimony adduced before this committee in opposition to this particular procedure.

Mr. DOLE. Thank you. That is all.

Mr. JONES. Mr. Johnson?

Mr. JOHNSON of Wisconsin. Is this particular legislation backed by the conservation groups, also?

Senator RIBICOFF. It certainly is.

Mr. JOHNSON of Wisconsin. I know that there was talk about it among them.

Senator RIBICOFF. Yes.

Mr. JOHNSON of Wisconsin. They were very much interested at the start of the session.

Senator RIBICOFF. I would say that they are very anxious for this. I would say that the conservation people, the wildlife people, the medical people are for it. To my knowledge there has been no opposition to this particular piece of legislation from them.

I wish that other legislation that comes before us would have such unanimity, but I do believe that this particular piece of legislation

does have the unanimous support of everybody in this field, even though they may differ in their conclusions upon the safety of pesticides as a whole.

Mr. JOHNSON of Wisconsin. Thank you.

Mr. JONES. Mr. Beermann?

Mr. BEERMANN. Mr. Chairman, by the enactment of this legislation, Senator, will there be more responsibility on the manufacturers than there is the way the law is presently written?

Senator RIBICOFF. Yes. The responsibility is such that it will place the burden of proof on the manufacturer. If the Department of Agriculture does not approve his pesticide he will not be able to market it until he runs through the gamut of approval. This is similar to the application of the law to drugs and the various other laws that we have on the books dealing with problems that affect the consumer.

I think that this is something that will be good for the chemical manufacturers themselves, because I personally believe that the chemical manufacturers want to be responsible. And the responsible ones look askance at the thought that there may be a pesticide on the market that the Department of Agriculture will not approve; because, if something happened, if some great tragedy takes place, then, of course, it casts opprobrium and doubt on every pesticide. And that is why I think in recognizing this they, too, are anxious to have this loophole plugged.

Mr. BEERMANN. In the same light, this will be relieving the Department of Agriculture of its responsibility?

Senator RIBICOFF. No, it will not relieve the Department of Agriculture of the responsibility, because I think that they make their decision after they research and look into the pesticide application. What it does, then, is shift the burden of responsibility to the manufacturer of the rejected product until he can prove it safe, instead of waiting for the public to find out that it is unsafe over a period of time. I think this is a potential danger that we have when we are dealing with toxic substances.

Mr. BEERMANN. Thank you.

Mr. JONES. Mr. Stubblefield?

Mr. STUBBLEFIELD. Do the manufacturers, in general, Senator, agree on this recommendation?

Senator RIBICOFF. It is my understanding that the various associations represented in this field have agreed that this is a good piece of legislation. And I do believe before your hearings are over that you will have representatives of the manufacturers associations here to testify. And it is my understanding that they do approve of this piece of legislation.

Mr. STUBBLEFIELD. None of them have appeared in opposition to it?

Senator RIBICOFF. To my knowledge, none have appeared in opposition and none have written in opposition. As a matter of fact, we have received some letters from manufacturers definitely in favor of this, because they recognize that if they are responsible they do not want to have an irresponsible manufacturer cast doubt upon the legitimate responsible manufacturers.

Mr. STUBBLEFIELD. Thank you.

Mr. JONES. I would like to say, for the benefit of the gentleman though they may differ in their conclusions upon the safety of manufacturers, and it is my impression that—as that of the Senator—that they are supporting this legislation.

Mr. STUBBLEFIELD. What would be the process if there was a rejection—what would be necessary to be done by the manufacturer?

Senator RIBICOFF. If there was a rejection, there could be an advisory committee set up by the National Academy of Sciences, which would then pass upon the dispute. Then, if the manufacturer was dissatisfied, he could go to an administrative hearing and then to court—he could take his case to court for review, but the burden would really be upon him.

I think when you are dealing with toxic substances that this is fair. The fact remains that while protest registration is not a great problem, because it only affects a few products, this is proof that the average responsible manufacturer is satisfied. I think that if you would talk to the large manufacturers in this field they would tell you that, if the product was rejected, they would not insist upon placing it on the market. They will try to iron that out.

Mr. STUBBLEFIELD. As to the proof of the safety of the product, if there is some disagreement, who would have the responsibility for determining that—Food and Drug, or the Department of Agriculture?

Senator RIBICOFF. No; I would say that the decision, ultimately, would be upon the shoulders of the courts, by providing for appeal procedures. In other words, we are not being arbitrary by saying, "No, you cannot do anything about it." If a person feels that he is aggrieved he has a right to go to the National Academy of Sciences, have a review there, and then, if he is dissatisfied, under the bill he can have a hearing before the Secretary and then go to court and have his case reviewed.

In other words, we do give the manufacturer those safeguards to make sure that he is not closed off by an arbitrary decision of some official in the Department of Agriculture.

Mr. STUBBLEFIELD. Thank you.

Mr. JONES. Mr. Matthews?

Mr. MATTHEWS. I am not a member of this subcommittee, but I am here because of my interest in this legislation. I appreciate the Senator's remarks.

Senator RIBICOFF. Thank you very much, sir.

Mr. JONES. Mr. Matsunaga?

Mr. MATSUNAGA. I have no questions. Thank you.

Mr. JONES. Thank you very much; we appreciate your coming here.

Senator RIBICOFF. Thank you.

Mr. JONES. The next witness will be the Honorable Benjamin S. Rosenthal, one of our colleagues on the committee, who has taken a great interest in this subject, and whom we on the committee feel is our representative of the metropolitan consumer groups. He is the author of H.R. 6828.

We will be delighted to hear from you now.

Mr. ROSENTHAL. Thank you.

Mr. JONES. You may proceed.

STATEMENT OF HON. BENJAMIN S. ROSENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ROSENTHAL. Thank you, Mr. Chairman.

I would first like to express to you, and to the other members of this subcommittee, my deep appreciation for your consideration of my bill, H.R. 6828, to amend the Federal Insecticide, Fungicide, and Rodenticide Act. I am very grateful for this opportunity to appear before you, and to testify in behalf of this legislation.

I thought that it might be helpful if I could hand out to the members of the committee the booklet published by the President's Science Advisory Committee entitled "The Use of Pesticides." This is a good overall and broad review of this subject. I would suggest that at the leisure of the members of the committee that they peruse this. I think that they will find it most beneficial in their consideration of this legislation.

Mr. JONES. We thank you for making this available to the members. I am sure that they will read it between now and the time that we act on the bill.

Mr. ROSENTHAL. In recent years, and especially after the publication of Rachel Carson's book "Silent Spring," there has been considerable public concern about the widespread use of pesticides and insecticides, and the threat they offer to our environment. Miss Carson has written that—

the most alarming of all man's assaults upon the environment is the contamination of air, earth, rivers, and seas with dangerous and even lethal materials.

The fears that she expressed were confirmed by the report of the President's Science Advisory Committee and by its Chairman, Dr. Jerome B. Wiesner, who, while testifying before the Senate Government Operations Subcommittee, stated that—

man's uncontrolled use of poisonous chemicals, including pesticides, is potentially a greater hazard than radioactive fallout.

The report of the Presidential Committee recognized the widespread need for, and advantages of, pesticides, and at the same time acknowledged that the public has reason to be alarmed by the many dangers inherent in the indiscriminate use of these chemicals. They stated:

The panel believes that the use of pesticides must be continued if we are to maintain the advantages now resulting from the work of informed food producers and those responsible for control of disease. On the other hand, it has now become clear that the proper usage is not simple and that, while they destroy harmful insects and plants, pesticides may also be toxic to beneficial plants and animals, including man.

It is not my purpose, Mr. Chairman, to engage in a general discussion on pesticides, nor do I feel competent to do so, but rather to direct my attention to the legislation under consideration. However, so that the record may be complete, it seems to me that a brief summary of historical background would be useful to the subcommittee.

When the agricultural revolution resulted in the use of enormous acreage for single crops and thereby eliminated the previous natural defense against insects, it became necessary to attack the increasing insect population. The chemical industry, which rose to great heights during World War II, developed many lethal weapons against these insects.

The first of these so-called miracle pesticides was the chlorinated hydrocarbon, DDT, developed in the early 1940's. Continued research produced more toxic chlorinated hydrocarbons, and continued research produced more hydrocarbons, among which are dieldrin, aldrin, endrin, toxaphene, lindane, methoxychlor, chlordane and heptachlor. The organic phosphorous compounds which are used primarily in insecticides are Parathion, malathion, phosdrin and others. Since 1947 the production of synthetic pesticides has increased some fivefold from 124 million pounds to 637 million pounds.

Because of the characteristics of many of these chemicals, they have a tendency to persist in the environment in toxic form. Thus there is a very real threat of contamination and pollution of our surface and underground waters and of the soil. The danger to fish and wildlife, game and harmless insects, and indeed to the American public, is not merely from large-scale indiscriminate use of insecticides and pesticides, but also from the many chemicals that are sold for home and garden use. What makes these chemicals so threatening are their characteristics and ability to accumulate in the human body and the environment over a number of years. It has been a well-accepted biological fact that these chemicals pass from one organism to another, and even from animals to humans, and from mothers to children.

The President's Committee reported that approximately 150 deaths a year are attributed to the use of pesticides in the United States, and that about half of these occur in children who are accidentally exposed at home. In California, which uses 20 percent of the nationally consumed pesticides, they report that 3,000 children per year are affected by these chemicals.

Clearly, there is a mandate for broader control of the manufacture, sale and use of these modern chemicals. This should be done on the Federal, State, and local levels of government. In addition, there should be a more precise definition of responsibility between existing agencies which are dealing with this problem.

The two basic Federal statutes which deal with these matters are the Federal Insecticide, Fungicide, and Rodenticide Act and the Food, Drug, and Cosmetic Act. The U.S. Department of Agriculture has primary responsibility for pesticide control, and the Food and Drug Administration has responsibility for the safety of food on which pesticides were applied. After approval, if necessary, by the FDA, the Department of Agriculture registers the pesticide which is then marketed with approved labeling.

Under present law, the USDA must grant registration to a product under protest upon written demand of a manufacturer where there has been refusal of registration by USDA. This is a loophole in the law, the effect of which is that a purchaser cannot distinguish a product which has been rejected from one that has been approved. The label on the product sold while under protest does not carry any indication of the disapproval by the USDA.

My bill, H.R. 6828, will close this loophole by eliminating the practice of protest registration, and will therefore prevent any disapproved product from being sold in interstate commerce. This bill also provides that every pesticide sold must carry an official registration number on the label. This procedure would permit public health officials to

keep records of the prescribed antidote to a specific pesticide and make rush information available upon request from physicians or other authorities.

I am pleased to report that the Department of Agriculture has endorsed enactment of H.R. 6828, with a few minor changes.

As the sponsor of this bill, I should like to emphasize two particular points for consideration by the subcommittee. The first question which should be asked is this, How large is this loophole that permits a manufacturer to market his product without full compliance with the legal and scientific requirements of the Federal Insecticide, Fungicide, and Rodenticide Act?

A great deal of discussion is sometimes necessary before a manufacturer and the scientists of the Department's Pesticides Regulation Division reach an understanding that will permit registration of a product under this statute. If the manufacturer hasn't tested his product thoroughly enough to obtain the type of data required, he is told by the Department what he must do to comply. If extended discussions fail to bring agreement, a manufacturer often abandons his efforts for registration. However, he has the right to register—and on rare occasions does register—his product under protest.

Of the 76,000 products registered by USDA since 1947, only 27 were registered under protest. Only seven of these products are currently on the market. Here is one of these products—a lindane vaporizer—the label of which failed to carry the warning “not for home use.”

This box, Mr. Chairman, which I hold up says on the front of it, on its face, “electronically controlled bug death vaporizer; new and improved; unbreakable: \$3.95.” And it says, “Take the bugs out of living.”

It is a device which is supposed to be hooked up by means of nails or some other fashion, onto a wall, or fixed in some other way and then plugged into a socket or electrical outlet.

You put the lindane pellets into the interior of the device. You cover it with this [indicating] and you sit back and wait for the bugs to go. Now there is no doubt that the bugs will go, but some other people may suffer in the process.

In the box itself are the lindane pellets which contain on the wrapper the words, “poison, contents insecticide.” It has the name of the manufacturer on it. It has the antidote if taken.

In the interior of the box is the instruction sheet on which it says, “Warning—may be fatal if swallowed—may be absorbed through the skin—do not breath the dust or spray mist, avoid contact with skin and eyes, wash thoroughly after handling; avoid contamination of feed and foodstuffs.”

I would presume, Mr. Chairman, that the manufacturer intended this for commercial distribution.

It also says on the outside, “Read carefully installation and operating instructions.”

And as additional information, “approved by the Department of Safety, Los Angeles, Calif.” That approval by the Department of Safety of Los Angeles, Calif., was made by the underwriting section of that local governmental unit and approved if for electrical

safety, by the Department of Building and Safety, rather than for the pesticide safety or any other chemical test that it would have to be approved for.

The Department rejected this product, because it did not say on the label "not for home use." In other words, the purchaser ought to know in rather clear and unmistakable language that this should not be used in someone's basement or be put in someone's garage or immediately adjacent to a barbecue place or something else around the house.

This device has very narrow limitations and should be used, certainly, by persons reasonably expert in handling it. Nevertheless, despite the fact that the Department rejected this device it was sold to the general public in many stores throughout the entire United States and is still available for purchase.

Mr. DOLE. Where did you get it?

Mr. ROSENTHAL. I got this from one of the inspectors in the Department of Agriculture.

I had a particular experience with lindane myself and I know that it is unpleasant, to say the least.

Mr. JOHNSON of Wisconsin. What use would this be to the public, if they could not use it; would it be of any use?

Mr. ROSENTHAL. Precisely the case. It certainly should not be used by the public. This should only be used by someone in a commercial area or on a farm or some other installation where it is not around children or it is not around housewives and where it is not around people that do not understand the nature and the extreme caution that must be exercised with this product.

Because only 27 products out of 76,000 have been registered under protest, some people have inferred that H.R. 6828 would deal with a rather small problem.

The Department of Agriculture's record of pesticide registration for the past 6 years follows:

Fiscal year	Applications received	New products registered	Labels rejected
1958.....	16,769	4,600	2,309
1959.....	17,653	4,876	2,619
1960.....	19,871	4,694	3,198
1961.....	21,447	5,383	3,873
1962.....	21,456	5,104	3,565
1963.....	22,754	4,932	4,022

I would like to bring to the attention of the subcommittee that last year, 1963, the Department received 22,754 applications for registration of pesticides. Of those 22,754 there were 4,932 new products that received the approval of the Department and registration. There were 4,022 labels rejected by the Department in 1963. Of those 4,022 they could only have been sold on the market if the manufacturer so chose.

These figures indicate that even today, after years of experience under the statute, thousands of patently false and misleading labels are submitted in the hope that somehow they will slip by the regula-

tory authorities and get out into the national marketplace to dupe the innocent or unwary.

By the enactment of H.R. 6828 we will close this loophole and thus prevent any one of the 4,022 labels rejected last year from appearing on a store shelf for sale to an unsuspecting consumer.

Although most manufacturers are aware of the rigid legal and scientific requirements for the registration of pesticides, and try to comply with them, a considerable enforcement program is required to assure compliance with the law by the makers of the nearly 57,000 registered products that are currently offered for interstate sale and use. Here is a tabulation of the enforcement activities of the USDA in this field during the past 6 years:

Year	Samples collected	Samples analyzed	Citations	Seizures	Regulatory correspondence
1958-----	1,261	1,301	¹ 227	24	126
1959-----	1,310	1,574	² 193	25	121
1960-----	1,420	1,560	³ 233	36	121
1961-----	1,992	1,690	⁴ 263	59	111
1962-----	1,824	1,567	⁵ 376	77	76
1963-----	2,159	2,006	⁶ 296	111	139

¹ 4 citations after seizure.

² 14 citations after seizure.

³ 12 citations after seizure.

⁴ 23 citations after seizure.

⁵ 57 citations after seizure.

⁶ 60 citations after seizure.

Even these figures understate, to some extent, the magnitude of the enforcement efforts required to regulate marketing of these economic poisons because the USDA inspectors must often visit four or five establishments to procure one sample.

Although I have great respect for the competence and integrity of the regulatory officials of the USDA, we must also ask ourselves: How many times has a product been approved for registration because the applicant manufacturer, as well as the Government official, both knew that the legal power was lacking, if it came to a showdown, to keep it out of interstate commerce?

Let us make it unnecessary even to consider such a question. Enactment of H.R. 6828 would eliminate this danger. In my opinion, it would strengthen the hand of the regulatory officials, and thus improve enforcement of the statute. There is a further benefit to be gained in the enactment of H.R. 6828. When a manufacturer chooses to register a product "under protest," USDA must develop performance and toxicity records as a basis for legal action to show why the product should not be registered and why it should be removed from the market. That takes time and money. Furthermore, while the scientific evidence is being gathered, and while the judicial processes are at work, the product is still in the market and lives may be in jeopardy.

In addition, the requirement within the bill that every pesticide label in interstate commerce carry the USDA registration number will be of immense benefit to the medical profession. When a patient suffering from overexposure to one of these poisons seeks medical attention, it is frequently difficult to ascertain the precise causative

agent. The container may not be at hand. The label may be illegible because of discoloration or rough handling. The urgently needed information may be on a portion of the label that has been torn off or painted over.

If, on the other hand, a USDA registration number is prominently displayed on the label and still remains legible, it will be much easier for a physician or a nurse who is racing the clock to learn the contents of the spray or pellet that apparently caused the patient's dangerous condition. Instead of scanning a long list of ingredients, calculating their relative amounts and importance, and then choosing an antidote, medical or hospital personnel need only check the number against their file of known commercial poisons and their antidotes.

The subcommittee may be interested to learn that there are now nearly 500 poison control centers in 48 States and 2 Territories. Through the National Clearinghouse for Poison Control Centers, which was organized in 1957 by the Public Health Service of the U.S. Department of Health, Education, and Welfare, these centers regularly are advised of the toxicity of new household products.

Each poison control center is frequently besought in cases of emergency to identify the suspected hazardous substance and advise an antidote. If the local poison control center cannot identify the product, it can and does telephone the National Clearinghouse here in Washington for the needed information.

How much simpler and faster it would be, Mr. Chairman, for this type of information to be requested and furnished if the product's label clearly carries its USDA registration number.

I am informed that the National Clearinghouse for Poison Control Centers maintains close and continuing liaison with the USDA with respect to pesticides, among other products under its jurisdiction. I am further informed that this day-to-day working relationship will be considerably simplified and the transfer of information speeded if registration numbers were required on all labels within the purview of the Federal Insecticide, Fungicide, and Rodenticide Act. Accordingly, H.R. 6828 would add this requirement to the statute.

I am hopeful that you and the members of this subcommittee will look with favor on this legislation.

Thank you for your kindness in permitting me to make this statement in support of my bill.

Mr. JONES. Thank you, Mr. Rosenthal.

Mr. Dole, do you have any questions?

Mr. DOLE. I want to commend our colleague for a very fine statement and his flawless pronunciation of some of those difficult words.

A good example of this danger was illustrated by this "do-it-yourself kit" you displayed. It seems to me it should be marked not only "Not for home use" but clearly labeled as having been registered under protest, and for outdoor use only.

Do you happen to know offhand the names of the other products?

Mr. ROSENTHAL. I do, Mr. Dole. The seven that were available and are available at the present time are lindane pellets for use in the bug death vaporizer, which is the item I have already exhibited to the subcommittee. This registration was denied because the label failed to carry a warning "Not for home use." Another one was

Algimycin 200, a swimming pool chemical. And this was denied because of the use of the mercury compound in swimming pools and it was not considered safe.

Its coproduct, Algimycin 300, was denied for the same reason.

Another product called Perma-Guard, for treatment of alfalfa crown for seed, was denied because the previous registration was canceled on the basis of information that was available earlier which indicates that the product is not effective for the purpose stated on the label.

Another one was called Hari-Kari neodane pellets made of lindane and was denied because the label failed to carry the warning "Not for home use."

Another one was lindane pellets, bug pill, which was denied because the label failed to carry the warning "Not for home use."

Another one was another lindane tablet called Vapotab, which was denied for the same reason, that the label failed to carry "Not for home use."

All of these were made by different manufacturers.

Mr. DOLE. It appears this might result in cases where other competitive consumer products have been registered. Are there other lindane tablet products which have been approved?

Mr. ROSENTHAL. Oh, yes. There are many lindane products that have been approved, but they carry specific warnings in large letters, so that the directions are clear. Only the most irresponsible person would become involved in not following the directions, but the thing that is wrong with this is that there is nothing outside of the word "death," which would scare me to begin with—there is not any warning to the consumer not to use this around the house.

Mr. DOLE. I suppose that any one who saw "bug death" on a package would be careful, and also it could be shown the product was registered under the protest registration method. Basically, of course, the burden of proof should be on the manufacturer that his product is not harmful to the public.

Mr. ROSENTHAL. This bill would provide precisely that. It would shift the burden of proof from the Department to the manufacturer. It may well be that he gains a competitive advantage by this. It is only conjecture on my part, but I kind of suspect that maybe at \$3.90 he thought that he could sell more if it did not have the words on it "Not for home use" than if it did have that warning. That is only conjecture on my part, though.

Mr. DOLE. I appreciate your statement. Thank you.

Mr. JONES. Mr. Johnson?

Mr. JOHNSON of Wisconsin. No questions.

Mr. JONES. Mr. Beermann?

Mr. BEERMANN. Congressman Rosenthal, you stated that there were approximately 150 deaths a year, and I presume that is from the use of the insecticides in the United States.

I wonder how many deaths occur from the use of medicines in bathroom cabinets, or medicines that are sold to the general public. And even from overeating. I do not want to be contrary about this.

Mr. ROSENTHAL. I have no experience in the overeating department. [Laughter.]

I have no knowledge as to the number of deaths other than what

is reported in this. I would presume that they did a reasonable amount of research before they included it in this widely published pamphlet.

Mr. BEERMANN. I noticed that in the pamphlet. Thank you.

Mr. JONES. I might make this comment: You may recall that a couple of years ago we adopted a resolution in the House, which was passed by the Congress, setting up a National Poison Prevention Week to call attention to this. It happened that this National Poison Prevention Week was started by a druggist in my district. He has done a great job of calling attention to the dangers that are inherent not only from the medicines in the medicine cabinets but in detergents and cleaning compounds and things like that—to keep them, particularly, out of the hands of children. I think there are something over 4,000 deaths a year from those substances.

Through a joint concurrent resolution which I sponsored, Congress set up this National Poison Prevention Week which the President proclaims each year in the month of March. And we are hopeful that that will be of some help.

I might say, in connection with what Mr. Beermann has brought out here, that about 10 or 11 years ago we had a select committee, the Delaney committee, to look into the use of food additives, preservatives, and coloring; cosmetics, insecticides, and pesticides; and things of that nature. That committee functioned for about 2 years, and did a lot of research. It has some of the best chemists and other people in the country before it. I think that pointed out at that time the great problem. It was also responsible for some changes that were made in the Food, Drug and Cosmetic Act. It was sounding the dangers that are inherent in many of these problems. In other words, I think it emphasized the importance of the correct labeling. And, as has been brought out here, it emphasized the labeling in such fashion that the antidote would be readily available as would be provided for here.

I just wanted to mention the fact that this danger was recognized many years ago. And it seems that just recently, with the help of the industry itself, they have recognized and want to cooperate in this, to eliminate as far as possible that danger.

I think we all recognize that any time we use any product that is going to be fatal or poisonous, for the use of eliminating insects, there will also be some dangers to the people who use them; and, therefore, it is all the more important that we use them in conformity with instructions and the cautions that are given. That is the purpose of this legislation.

Mr. BEERMAN. Before we get away from that, I would like to compliment our colleague on his testimony. I feel that he is much more adequately capable to discuss the problem than he claims.

Mr. ROSENTHAL. Thank you.

Mr. JONES. Mr. Abernethy?

Mr. ABERNETHY. I want to compliment him, too. He made a very fine statement.

Mr. Jones just referred to the work of the Delaney committee. I happened to have served as a member of that committee. Actually, this committee was created in the 80th Congress.

Mr. JONES. I thought it was the 81st Congress.

Mr. ABERNETHY. Very well. Dr. Miller of Nebraska was the chair-

man of the committee in the 80th Congress. It was in the 81st Congress that Mr. Delaney became chairman. Under his leadership—his very fine leadership, incidentally—there were some very thorough hearings and investigations. During those hearings, we went into the use of these and other products—pesticides, fungicides, and cosmetics, and so forth. That has been a long time ago. I do recall however, that we had very thorough hearings.

Why we permitted the insertion of the protest registration has raised a question in my mind. Offhand, I can see some substance for it, because some of these products were very fine products. They added tremendously to the production of food and fibers, which were sorely needed.

I would like to ask the witness if, in his study of this subject, he came across the reason for permitting registration under protest.

Mr. ROSENTHAL. I have not, Mr. Abernethy. Before I start that, I want to thank the chairman and you, both, for mentioning Mr. Delaney. Mr. Delaney represents the district immediately adjacent and contiguous to my district. We in New York are very, very proud of the leadership that he has shown in this field. And we are proud of the contribution that he has made to the Congress.

It is almost sheer accident that I took an interest in this subject. It is an important thing which is developing, Mr. Abernethy. It is not only the commercial use of these products but their use in the home and on the farms. You can go to almost any hardware store or any commercial store, in your district and cities, and you can buy all of the spray cans that you want, and you can spray up the house day and night. And most of them say: "Keep away from children." Some of them do not say it in such large letters.

Of the 3,000 kids that have had this experience in California, the vast majority of them were from urban or suburban areas and not from farm areas.

The problem is not as to the commercial use of these products. The interesting thing is that the commercial users who are experienced and have knowledge, probably have less danger than other people. Only occasionally do they have difficulty. Recently, in California, they sprayed and the weather conditions kept the clouds down, and this spray spread over some people, requiring hospitalization.

Mr. ABERNETHY. Of course, our work on this particular committee was not confined to farms—that is, for use on the farms. It was not a committee for agriculture. It was a special select committee.

Mr. ROSENTHAL. I know that.

Mr. ABERNETHY. It was created by a special resolution. At that time there was a tremendous wave of demand in the country for the complete elimination of many of these products, purely because they were poison. And we were confronted with the type of problem that Mr. Beermann has just now raised. If we had carried our effort that far, we would have found ourselves eliminating many valuable and effective medicines. While I can see some merit in eliminating some products from the market completely, at the same time there will be tremendous damage done to the public, because there is a lot of good in many of them.

I come back to this point of registration under protest. I have some

faint recollection that it was inserted because some unreasonable person in the department might arbitrarily, and without just cause, deny the privilege of marketing a good product.

I wonder if you have done any research on this point.

Mr. ROSENTHAL. Let me say this, I tried to find out what the legislative intent was at that time. I have been unsuccessful. The only inference that I drew was a legal proposition of the matter of the burden of proof. The burden of proof under the protest registration is on the department to prove that the product is unsafe. This proposed bill would shift the burden of proof to the manufacturer to prove that the product is safe. Of course, it would involve only a few products, as I have suggested, but it would tighten a wide-open loophole whereby the 4,000 products that were unregistered and refused registration last year could not be sold. I thoroughly agree with you. I want the record to be quite clear that I think that pesticides have done a marvelous job in many areas of the country. The President's committee said that. I would like to read only one paragraph:

While reducing food losses pest control has also resulted in foodstuffs of the highest quality. Today, for example, sweet corn, potatoes, cabbage, apples, and tomatoes are all available unmarked and the American housewife is accustomed to blemish-free products. Citrus fruits are not damaged or lost because of scale insects, fruit flies, and diseases. And, of course, the animal protein is lower because large-scale losses of cattle from tick fever and grubs no longer occur.

Certainly, in the areas that grow cotton, the bollweevil problem was one that had to be met by modern scientific advances, such as pesticides.

At the same time with each good that comes out of modern scientific advances there comes a concomitant bad, and the thing to do is to weigh these two and to limit as much bad as you can while maintaining the advantages of scientific advances. This would do that. And that is why, as the Senator from Connecticut has said, the responsible elements of the industry, who I take it will testify tomorrow, will tell you that they are in favor of this legislation. They want to keep the reputation and the integrity of the industry unmarred and unblemished and they do not want an unscrupulous individual manufacturer trying to take advantage of selling a few more products by not putting on the words "not for home use." They know that they have a large industry, one that has increased fivefold since 1941, and twofold since the Delaney committee had its hearings.

I want the record to be perfectly clear that those who sponsored this legislation feel that pesticides have done a great good, but at the other end, as Mrs. Carson has pointed out, and as the President's committee has pointed out, there are grave dangers from the misuse or excessive use of these pesticides. And all we say is that responsible people should take a responsible attitude and pay attention to what they are doing.

Mr. ABERNETHY. We also at that time had very great pressure brought upon us to pass some unreasonably rigid laws. There was a tremendous wave in the country about such. It even applied to the use of commercial fertilizers. The opinion was spread around the country that these fertilizers were being absorbed by the plant and in turn poisoning the people. We had a pretty tough job on the committee. But I think that we came out with very satisfactory legislation—maybe not adequate. Your bill is attempting to amend some

of the loopholes. No doubt, there are some points in the law that ought to be amended. And no doubt your bill will do this. We appreciate your interest.

Mr. ROSENTHAL. Thank you.

Mr. JONES. I might add that I also served on that committee for a couple of years. The frustrating part of it was, as I recall, that any product that was being sold, you could always find some one person who had some stature in his profession trying to convince you that you should not use that particular product. And as to any product on the market you will find somebody who will say that it should not be used.

I remember very vividly that one of our witnesses was a chemist. His hobby seemed to be to do away with cola drinks. He would ban any cola drink because of the bad effect it would have.

I think that it would be helpful if the members of this committee could go back and review some of the hearings that we had by the Delaney committee.

Another thing that we got into at that time was the fact that as to many products some people who used them had an allergy to those particular products. And while 99 percent of the people could use them with good results, possibly 1 percent could not. We know the history of penicillin, for example, that it has been fatal to some people, and yet I do not think that anybody would say that penicillin should not be produced, but there are some people who would say that we should not continue to use it. However, if properly handled it is all right.

We are getting into a rather controversial subject here. However, I am hopeful that before the hearings are concluded that we will reach some conclusions that will be helpful in protecting the public. I know that is your intention. And you should be commended for it.

Mr. Matsunaga?

Mr. MATSUNAGA. I too wish to commend Congressman Rosenthal for a very fine statement and a very thoughtful presentation. In your mention of the seven insecticides you mentioned one which I believe you called Hari-Kari. Is Hari-Kari an insecticide?

Mr. ROSENTHAL. It is pronounced or it is spelled H-a-r-i K-a-r-i.

Mr. MATSUNAGA. I suppose that it refers to hara kiri which is an ancient ceremonial method of suicide in Japan. Is this the modern version of it? [Laughter.]

My question is, Will your bill eliminate these seven insecticides from public sale?

Mr. ROSENTHAL. Yes, sir.

Mr. MATSUNAGA. Thank you.

Mr. DOLE. You mentioned there were 150 deaths and also some 3,000 children affected. It might be important to know, whether or not these seven registered under protest were directly responsible for any or part of those. Do you know?

Mr. ROSENTHAL. To the best of my knowledge there is no evidence that indicates at this time that those deaths are related to the seven products.

Mr. DOLE. In other words, it might be an approved product which was harmful or fatal.

Mr. ROSENTHAL. That is possible.

Mr. DOLE. And not these particular ones?

Mr. ROSENTHAL. That is possible, but the least I think we can do is to begin somewhere and plug up whatever loopholes are present.

Mr. DOLE. There is no direct evidence that by plugging up the loopholes we would help that. As I understand your bill, the maximum time would be about 6 months before the manufacturer finally has a determination that his product is safe?

Mr. ROSENTHAL. Within the bill itself there is a judicial review. If the manufacturer finds that he disagrees with the findings of the Secretary there is a method whereby the National Academy of Science shall designate an advisory committee and this committee will be sort of an appellate court, insofar as the Secretary is concerned. Thereafter, if that group finds against the manufacturer he has the right to go into the U.S. district court or any circuit court in which his product is manufactured.

Mr. DOLE. There is nothing in it which would be binding, such as by arbitration?

Mr. ROSENTHAL. No, I would not say so.

Mr. JONES. I might say that there are suggested amendments which would set up specific limits for these reviews and things like that, that at least would be to protect the public and the manufacturer.

Mr. JOHNSON of Wisconsin. Under your legislation, could these seven meet the requirements laid down by the U.S. Department of Agriculture?

Mr. ROSENTHAL. They could or could not?

Mr. JOHNSON of Wisconsin. They could?

Mr. ROSENTHAL. Of course, they would then get a registration. If this fellow had put on his wrapper "Not for home use," the registration would have been issued. In some cases some of these products may have been, as Mr. Matsunaga suggested, so toxic that they certainly should not be available to the general public under any instructions.

I have just been advised by one of my colleagues that in response to Congressman Dole's question, I was in error, that Senator Ribicoff's hearings did produce testimony that a California child did die as the result of this device right here. I have no independent knowledge of that. I am only telling what I have been told.

Mr. JONES. If there are no further questions, we thank you.

Mr. ROSENTHAL. Thank you very much, Mr. Chairman, for this opportunity.

With your permission, may I sit with the committee for the remainder of the hearings?

Mr. JONES. Certainly. You may feel free to do so. We are always glad to have all of our members attend and sit with us.

Mr. ROSENTHAL. Thank you.

Mr. JONES. You are most welcome.

We have next on our witness list Congressman Halpern, who is the sponsor of H.R. 7336, and also on the witness list for tomorrow, Mr. Dingell. I note that Mr. Halpern is not present, so that our next witness will be from the Department of Agriculture, Dr. M. R. Clarkson, Associate Administrator, Agricultural Research Service, who is accompanied by Mr. Justus Ward, Director of the Pesticides Regulation Division.

You may proceed.

**STATEMENT OF DR. M. R. CLARKSON, ASSOCIATE ADMINISTRATOR,
AGRICULTURAL RESEARCH SERVICE, ACCOMPANIED BY JUSTUS
WARD, DIRECTOR, PESTICIDES REGULATION DIVISION, U.S.
DEPARTMENT OF AGRICULTURE**

Dr. CLARKSON. Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you to express the views of the Department of Agriculture regarding H.R. 6828, H.R. 6913, and H.R. 7336 now under consideration by this committee. Mr. Justus Ward, Director of the Pesticides Regulation Division, is here with me.

The bills would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or canceling registrations, or requiring modification of claims or labeling of registered economic poisons.

The intent of the bills also is to permit the labels of economic poisons registered under the Federal Insecticide, Fungicide, and Rodenticide Act to carry the registration numbers and to authorize the Secretary of Agriculture to require by regulation that such registration numbers appear on the labels.

In the registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, the Department must consider both the effectiveness and safety of each product submitted. This requires the most careful evaluation of a wide range of products.

These products are complex. Although many of them have similar properties, each one differs from the others in some important aspect. They vary from insecticides for corn borers to repellants for mosquitoes; from nematocides to protect tobacco to ant and cockroach killers; from herbicides for control of weeds in lawns to killers of rats and mice; from fungicides to prevent decay in wood to insecticides for malaria mosquitoes. Over 50,000 formulations based on more than 500 individual chemical compounds have been registered.

When an applicant is seeking registration of a new pesticide, detailed and convincing data must be furnished to the Department showing that the product will give effective and safe pest control under the proposed conditions of use. He must furnish the labels to be used on the containers. Several hundred pages of charts, formulas, and text setting forth the results of testing may be required to support an application for a new chemical.

The data submitted by the applicant are studies by a competent staff of scientists, including pharmacologists, entomologists, bacteriologists, chemists, biologists, and plant pathologists. If the Department feels more data are needed for evaluation in support of the claims of the applicant, the Department asks that it be provided. If the Department feels that a proposed label does not contain adequate directions and warnings to protect the public, the applicant is asked to make the necessary corrections. If the evidence is convincing that the proposed chemical is safe and effective when used as directed and all labeling requirements are met, the Department grants a registration.

The Department is hampered by one feature in the act which gives the applicant the right to demand and receive "registration under pro-

test" when regular registration is denied, even though the denial is based upon lack of adequate data to prove the safety or effectiveness of the proposed use. The net effect of a registration under protest is that—

(1) An economic poison which the Department believes is not entitled to registration under the act is nevertheless distributed in commerce;

(2) State officials responsible for the regulation of pesticides within their States are hampered in bringing the same or similar products into conformity with State requirements; and

(3) The burden of proof as to the safety and effectiveness of the product in relation to the Federal Insecticide, Fungicide, and Rodenticide Act shifts from the applicant to the Department.

Accordingly, a formulation that is not acceptable to the Department for registration might be marketed for an extended period of time on a "registration under protest" basis until the Department can develop the extensive performance and toxicity records essential for effective court action to remove the product from the market.

The proposed legislation would eliminate registrations under protest and give the Department authority to deny or cancel any registration, or require modification of claims on labeling in any case, with provision for the applicant to request that the matter be referred to an advisory committee or to request a public hearing. Additionally, the Secretary would be given authority for immediate suspension of any registration when he finds such action is necessary to prevent an imminent hazard to the public. Such hazard might be directly to human health or safety, or present an imminent danger to livestock, crop, or fish and wildlife values.

The bills under consideration also provide for the presence on the label of the Federal registration number assigned to a product. This would readily identify products registered with the Department for marketing in interstate or foreign commerce. As it now stands, there is nothing on the label to distinguish between those formulations registered with the Federal Government and those that may be packaged and offered for sale without registration; and the law actually forbids any reference to registration on the label or in the labeling.

The Department thinks it is advisable to provide for requirement of the registration number on the labels by regulation in order to afford flexibility in applying such requirement to classes of products where it will protect purchasers or otherwise effectuate the purposes of the act.

The Department heartily supports these bills as indicated in our report on H.R. 6828 to the committee on July 12, 1963. Secretary Freeman expressed concern over the registration under protest provision in the current law when he testified before the Senate Subcommittee on Reorganization and International Organizations earlier this year.

The Department recommends several changes in language for purposes of clarity and better administration, as follows:

1. In section 3 of the bills, on page 3, line 7, after the word "Secretary", insert the following sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory com-

mittee." It is believed that this authority in the Secretary is desirable in the event that he wishes consultation on questions of pesticide safety or effectiveness with expert authorities in other scientific institutions who could contribute information, experience, and judgment to supplement that already available to the Department, in evaluating data submitted by the applicant.

2. In section 3 of the bills, on page 3, line 19, preceding the period, insert the following: " , all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition." This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

3. In section 3 of the bills, on page 4, line 2, change the word "in" following registration to "of". This appears to have been a typographical error.

4. In section 3 of the bills, on page 5, lines 20-21, delete the phrase "final action is taken concerning registration of the product", and substitute the following: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him". In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". These changes are submitted to eliminate an apparent inconsistency by the provision in the bills that considers all data submitted to the Secretary or an advisory committee confidential until final action is taken concerning registration of the product, but also providing for such data to be included in the record at the public hearing provided for in the bills.

5. In section 7 of the bills, on page 8, line 16, insert the following preceding the period: " , and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate." Since the provisions of the act for registration under protest would be deleted by the bills, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bills become effective. However, to avoid any possible doubt in this respect this change is proposed.

We feel that these several minor changes will improve the bills. We should like to stress again our full support of H.R. 6828, H.R. 6913, and H.R. 7336, which will strengthen the Department's hand in the interest of protecting the public.

We will be pleased to respond to any questions which the chairman or members of the committee may have.

I should like to say that there is one substantive change in our suggestions. On page 5 of my statement, as already read, item 2, it states, "In section 3 of the bills, on page 3, line 19, preceding the period, insert the following: 'all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition.' " This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

In other words, if the Secretary asks for this committee, the Department will pay the costs, but if it is asked for by the applicant, the applicant will pay the costs of the committee.

Mr. JONES. Pardon the interruption. In your experience here, approximately what would those costs be?

Dr. CLARKSON. That would involve travel expense and the usual governmental allowances for per diem for the members of the committee recommended by the National Academy of Science during the time that they are actually working on that matter. It usually involves one, two, or three meetings of 2 or 3 days' duration. So the cost would not be extensive.

The committee is required to finish its work within 60 days, unless that time is extended by the Secretary for an additional 60 days.

Mr. ABERNETHY. Is that in the bills?

Dr. CLARKSON. Yes.

Mr. ABERNETHY. The 60-day period?

Dr. CLARKSON. Yes; this would be consistent with similar provisions for the payment of costs of similar committee under some portions of the Food, Drug, and Cosmetic Act.

Mr. JONES. As I understand it, under this bill, you would bring the insecticide, pesticide act into conformity and make it comparable to what we have under the Food and Drug Act now; is that correct?

Dr. CLARKSON. For appeal procedures, yes, sir; I would say so.

Mr. JONES. Do any other members of the subcommittee have any questions of Dr. Clarkson?

Mr. ABERNETHY. As I recall, you were with us when we had the hearings on the pesticide act back in the 81st Congress? Do you recall the reasoning at that time behind the provision for permitting registration under protest?

Dr. CLARKSON. Mr. Abernethy, I was not actively engaged in this kind of work at that time. I was in the Department in the same agency that was given the responsibility for it.

It is my understanding that it was the consensus at that time that some means should be provided for industry to force a court review of an item that had been refused registration by the Department. It was not anticipated that it would be used very often, but it was thought that some means should be provided.

Mr. ABERNETHY. Whose counsel did we have from research at that time?

Dr. CLARKSON. I believe it was Dr. Reed and Mr. Griffin and, perhaps, Harry Reed who was director of the division at that time. All of these people have now left the Department.

Mr. ABERNETHY. That is all. Thank you.

Mr. JONES. Mr. Dole.

Mr. DOLE. Is there a procedure for a review of a pesticide which may have been approved when discovered later that it may be harmful?

Dr. CLARKSON. There is provision in the law now for the Secretary to cancel a registration already given when new information shows such action to be appropriate, but in the current provisions of the law, the registrant, the holder of this registration, may ask for and must be granted registration under protest at that point. This bill would eliminate that opportunity.

Mr. DOLE. How many times has this happened; has the registration been suspended?

Dr. CLARKSON. Well, it occurs rather frequently. In most instances, Mr. Dole, the evolution and development of new evidence is not a

sudden thing. It comes along in bits and pieces, so that the practice of Mr. Ward and his associates is to contact the registrant, the holder of the registration, and to discuss with him the importance and the significance of this new evidence. Usually, the matter is handled by changes in the formulation, changes in the directions for use, changes in the warning statement that accompanies the product as requested by the registrant and accepted by the Department after such a conference, or in some cases the voluntary removal of a product from the market. Occasionally, however, the Department has to take direct action to cancel registration.

Mr. DOLE. Have any of these seven you mentioned, at one time properly registered and are now in a state of suspension, and under protest registration?

Dr. CLARKSON. None of those had been registered without protest.

Mr. DOLE. How many, for example, the last calendar year were suspended or had their registration suspended—do you have any figures on that?

Dr. CLARKSON. We perhaps could furnish that information for the record. I want to say that the usual situation is that these things are worked out before the crisis arises. Our records on suspensions and changes of this kind may not necessarily reflect all the actions taken.

Mr. DOLE. Do you think the law is adequate in this respect? Is it a continuing procedure where you are always receiving information and checking in an effort to protect the public?

Dr. CLARKSON. It is adequate in this regard, and will be strengthened with the provisions of this bill which replace the old provisions with new provisions for authority to suspend or cancel as the circumstances require.

Mr. DOLE. Under present protest registration procedure any product so registered could be sold?

Dr. CLARKSON. The normal procedure and the normal attitude of most registrants as evidenced by the small number of registrations under protest is either to accept the Department's decision and to take the product off the market or to try to find some acceptable way of modifying it.

Mr. DOLE. Thank you.

Mr. JONES. Mr. Beermann.

Mr. BEERMANN. Dr. Clarkson. I want to thank you and Mr. Ward for your interest in the corn root worm program in our area 2 years ago.

Dr. CLARKSON. Thank you.

Mr. BEERMANN. They were in quite some number and would have caused great economic damage.

Dr. CLARKSON. They have visited the people to the east of you this year.

Mr. BEERMANN. We have sprayed our farm for corn root worm the first part of last week, I believe.

If a manufacturer were to develop a new chemical, what procedure would he go through to get the chemical approved for immediate use; how long would it take him to get it approved?

Dr. CLARKSON. A new chemical may take a very substantial length of time. It often does. He must develop either through his own

resources or through grants or arrangements with scientific institutions, such as a State agricultural experiment station or a foundation, carefully controlled and detailed experimentation to show that (1) it is useful for the purpose for which it is represented; and (2) that it is safe under the expected and proposed conditions of use. The matter of safety is a very difficult matter to deal with.

In the case of so many of the chemicals there are questions of effect upon the operator, effect upon the soil and water, upon crops, upon plants, upon livestock, upon fish and wildlife, upon ingestion and inhalation and skin absorption, so that there would be a wide range of problems which he must accumulate data on and submit that in a convincing form so that Mr. Ward and his associates can accept it.

Mr. BEERMANN. Specifically now, Dr. Clarkson, would he be able to get a new chemical registered more quickly if the law is changed or is not changed?

Dr. CLARKSON. It would not change the timing for getting a new chemical registered.

Mr. BEERMANN. Thank you.

Mr. ABERNETHY. It would change the timing of its marketability, because now he could market it under protest.

Dr. CLARKSON. It would deny for anyone the right to market an unapproved product, which is what registration under protest amounts to.

Mr. BEERMANN. If you will yield, I would appreciate your yielding.

Mr. ABERNETHY. Yes.

Mr. BEERMANN. Then, probably, they would be able to use new chemicals under the present law quicker than if the law is changed.

Mr. JOHNSON of Wisconsin. Under protest.

Dr. CLARKSON. As a practical matter, it would make no difference because we are talking about 27 cases since 1947, and only 7 outstanding at the present time—and that is out of over 50,000 currently active registrations and probably 75,000 that have been registered all told, and a great many more that have been presented and have been rejected for one reason or another. While this bill will plug a loophole in the law, in our opinion most manufacturers have not availed themselves of it because of the stigma that would attach it to their product.

Mr. BEERMANN. If you will yield further. Dr. Clarkson, suppose we are using some chemicals about which there is some question whether they should be sprayed on our fields. I think that we have to take special precautions to guard our own surrounding area, to make sure that no one gets any of it. This was especially true with regard to the corn root worm. So, in effect, that particular chemical would probably be all right for Federal use, but maybe there are problems as to its use in the State.

Dr. CLARKSON. The circumstances you were dealing with there was that our people and the experiment station at the University of Nebraska had some experiments underway in your area. There are provisions in the law which are untouched by this bill which allow for experimental use under closely controlled conditions that do not result in any improper food going on the market or anything of that kind.

On occasions of this kind there is a great deal of extra attention given to the application of products which are being tried out.

Mr. BEERMANN. So that in the university's recommendation, they would not make a statewide recommendation until everyone understood the chemical and how to apply it?

Dr. CLARKSON. They would not until it had been registered. And if it were a product that would leave any residue on food or feed it would not be registered until there were tolerances set or exemptions given by the Food and Drug Administration under their act. Only then would the university be free to recommend its use in accordance with the registered precautions and directions for use.

Mr. BEERMANN. Thank you.

Mr. ABERNETHY. Dr. Clarkson, I am at a loss to understand why there was a provision included in the act that we passed 11 or 12 years ago with reference to registration? Looking at it now it seems rather a nonsensical thing. Can you refresh your memory, and give us any information on that?

Dr. CLARKSON. Yes, sir. I know what the reason was. There was a great deal of concern when the Federal Insecticide, Fungicide, and Rodenticide Act was passed.

Mr. ABERNETHY. And alarm.

Dr. CLARKSON. Well, Yes; sir. At that point this was a rather tough law. It superseded the Insecticide Act of 1910. It provided for the first time for prior review, with registration and clearance by the Department. So, it was feared that the distributors of these products would take advantage of this situation and claim that their products were approved and recommended by the Government. In order to deal with that matter the law provided that no reference—not even reference to the registration—could be placed on the label or in anywise connected with the distribution of the product. Now experience has shown, especially, as more and more products—

Mr. ABERNETHY. That it was in the interest of the consumer and not necessarily of the manufacturer?

Dr. CLARKSON. Absolutely.

Mr. ABERNETHY. It was not done in the interest of the manufacturer?

Dr. CLARKSON. No, sir.

Mr. ABERNETHY. Since I was a party to the act that relieves me considerably. [Laughter.]

Mr. JONES. Mr. Matsunaga.

Mr. MATSUNAGA. No questions.

Mr. JONES. Mr. Rosenthal?

Mr. ROSENTHAL. No questions.

Mr. JONES. Thank you very much, Dr. Clarkson.

Dr. CLARKSON. Thank you, Mr. Chairman.

Mr. JONES. And Mr. Ward.

Mr. WARD. Thank you, sir.

Mr. JONES. Our next witness will be Dr. John L. Buckley, Staff Specialist—Pesticides, Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior. We are very glad to have you here with us this morning.

STATEMENT OF JOHN L. BUCKLEY, STAFF SPECIALIST—PESTICIDES, BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. BUCKLEY. Mr. Chairman and members of the committee, the Department of the Interior, in its report to the Senate Committee on Agriculture and Forestry on S. 1605, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, which is identical to H.R. 6828, recommended the enactment of this legislation if amended as suggested herein.

The Department, and particularly the U.S. Fish and Wildlife Service, in carrying out responsibilities of conserving fish and wildlife, is convinced of the need to provide a more effective means of controlling the use of chemicals potentially harmful to living man, domestic animals, and fish and wildlife. We believe that H.R. 6828 is designed to accomplish this by strengthening the Federal Insecticide, Fungicide, and Rodenticide Act. The bill deletes the provisions of that act permitting registration of economic poisons under protest and establishes procedures for granting, denying, or canceling the registration or requiring the modification of the claims or the labeling by the applicant for registration.

One of the principal concerns of the Department of the Interior is the effects of pesticides on fish and wildlife. These effects should be considered during the registration of these chemicals. H.R. 6828 provides an opportunity for a careful consideration of these effects by an advisory committee, in addition to the consideration given by the Department of Agriculture. Each advisory committee shall include experts selected by the National Academy of Sciences and one or more persons from land-grant colleges. Since the bill specifically provides for representatives of these colleges, we believe that a provision for including on such a committee one or more persons familiar with the effects of pesticides on fish and wildlife also is necessary. Accordingly, we recommend that page 3, line 11, of the bill be amended by striking the period after "colleges" and inserting a comma and the following clause: "and one or more biologists familiar with the effects of pesticides on fish and wildlife."

Alternatively, however, we would not object to deleting the provision for including representatives of land-grant colleges and one or more biologists. We believe that the bill is broad enough to permit the National Academy of Sciences to include such representatives when necessary without specifically providing for such representation. Further, there may be occasions where their representation would serve no useful purpose.

Section 3 of the bill, among other things, authorizes the Secretary of Agriculture to order the suspension of the registration of an economic poison immediately, when he finds such action is necessary to prevent an imminent hazard to the public. This would be applicable to economic poisons now registered under the act. Procedures similar to those described for registering pesticides would

be applicable to suspend registrations. We believe this provision is essential. However, we believe that the term "public" may not include fish and wildlife and other natural resources. Accordingly, we recommend that H.R. 6828 be amended on page 6, line 3, after the word "public," by inserting therein: "including an imminent hazard to man, or animals or plants useful to man, including useful fish and wildlife,".

With these suggested amendments, we strongly recommend enactment of the bill.

Mr. JONES. Thank you. We will give your suggestions consideration when the bills are taken up in executive session. Are there any questions?

Mr. BEERMANN. Mr. Buckley, as the bill is written, would not the Secretary, probably, appoint a committee with members who had these qualifications that are recommended?

Mr. BUCKLEY. Yes, sir; very probably he would. I think our alternative would be preferable to the stipulation in the bill of these additional people. I think that the National Academy of Sciences is a reputable public group that will offer the names of people who are knowledgeable in the essential areas of consideration. I am certain that the Secretary of Agriculture will exercise suitable judgment in selecting from these. Therefore, the inclusion, by law, of any one from a land-grant college or with other special talents seems undesirable. Certainly, as for example with the lindane vaporizer which was brought before you and exhibited, there would be no virtue in having someone from a land-grant college or a biologist familiar with fish and wildlife on a committee, when we are talking about uses only within the home. So it seems unnecessary as a provision.

The alternative, we think, is preferable.

Mr. BEERMANN. Thank you.

Mr. JONES. Are there any other questions? Mr. Dole?

Mr. DOLE. You were on the technical staff that worked on this report?

Mr. BUCKLEY. Yes; I was.

Mr. DOLE. Thank you.

Mr. JONES. Are there any other questions? If not, thank you.

Mr. BUCKLEY. Thank you.

Mr. JONES. The next witness will be Mr. J. K. Kirk, Assistant Commissioner, Food and Drug Administration, U.S. Department of Health, Education, and Welfare. We are glad to have you before us.

STATEMENT OF J. K. KIRK, ASSISTANT COMMISSIONER, FOOD AND DRUG ADMINISTRATION, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. KIRK. Mr. Chairman, members of the committee, we appreciate this opportunity to comment on these bills.

The Department of Health, Education, and Welfare fully endorses the two objectives of the bills. In the case of foods and drugs, the Federal Food, Drug, and Cosmetic Act clearly requires proof of safety before products are placed on the market for public use or consumption. We believe there are sound reasons for applying the same requirement to pesticide chemicals. The bills have ample safeguards

whereby an adverse decision by the Secretary of Agriculture may be reviewed. This follows procedures established in the Food, Drug, and Cosmetic Act in cases involving petitions for regulations under the pesticide chemicals amendment, which deals with the establishment of tolerances for pesticide residues in or on food.

The second objective of the bills, to require registration numbers to appear on labels, is also valuable. Since we are charged with the responsibility for being sure that food products marketed in interstate commerce do not bear or contain illegal residues, we have conducted and actually participated with the Department of Agriculture in many educational programs calling attention to the need for proper use of pesticide chemicals to avoid the production of illegal crops.

Our theme throughout these programs has always been "Read and heed the label as registered by the Department of Agriculture," since the directions and precautions required on registered labels are so designed that, if followed, excessive or nonpermitted residues should not result. Under the present system, the labels do not bear any indication of registration and we have been asked many times how a grower can be sure that the label on the package he buys is, in fact, one which has been registered by the Department of Agriculture. Printing the registration number on the label should correct this situation.

The Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act present a number of mutual problems to the Department of Agriculture and the Department of Health, Education, and Welfare. Under the pesticide chemicals amendment to the Food, Drug, and Cosmetic Act, a petition for a tolerance in or on a raw agricultural product as submitted by anyone who wants a registered label for the pesticide must first be reviewed by the Department of Agriculture. We proceed to evaluate the petition only after the Secretary of Agriculture has certified that the product is useful for the purpose intended. If, however, our scientists conclude that a finite tolerance is not justified, the Department of Agriculture does not register the label with directions which would leave a residue.

We believe that, especially in view of the formalization of adjudicative procedures in these bills, they should be amended to insert in the Insecticide, Fungicide, and Rodenticide Act specific provisions requiring the Secretary of Agriculture to refuse registration where a residue in or on a food is reasonably to be expected, but where no tolerance or exemption from tolerance has been established under the Food, Drug, and Cosmetic Act. This, we believe, should encompass both raw agricultural commodities and processed foods.

Some pesticides are proposed for use on food crops where the intent is to use the pesticide without resulting in any residue at the time the crop is marketed. Others are intended for use where application to a food crop is not intended. Unfortunately, the manufacturer's intentions do not always work out in practice, and a weed killer intended for widespread use on roadsides, for example, may contaminate adjoining food crops; or a pesticide which is intended to be so used on a food crop so that it will result in no residue, actually does leave such a residue, either through use other than in accordance with directions, or because of unanticipated growing conditions.

When this occurs, we in the Food and Drug Administration may be faced with a significant regulatory problem in protecting the pub-

lic health, since we must apprehend the produce, demonstrate the presence of the illegal residue, and take immediate steps to remove the food from the market under the seizure provisions of the law.

Obviously, we cannot fulfill our obligations in such cases unless we have a method of determining the presence of the pesticide residue. In establishing tolerances, the Food, Drug, and Cosmetic Act requires that we be supplied with a method of analysis adequate for enforcement purposes.

There is no requirement in the Insecticide, Fungicide, and Rodenticide Act for the submission of adequate and appropriate methodology where the use of pesticides submitted for registration involves a non-food crop, or where the petitioner proposes registration for use on a food crop and believes that his data demonstrates that no residue would result from use as directed.

In fact, there is no legal requirement that the FDA even be consulted on these cases if the Department of Agriculture scientists agree with the petitioner, although in actual practice there are informal discussions between the two units in cases where the USDA people believe that there may be unresolved questions.

We are convinced, therefore, for the safety of our food supply, that it is in the public interest to require, by statute, where there is a reasonable expectation that the pesticide may contaminate food during production, transportation, or storage, including food processing, that the petitioner for registration submit a method of analysis acceptable to the Department of Health, Education, and Welfare. In the case of an application for a "no residue" registration in or on a food, HEW should review the data submitted and/or the use restrictions proposed, to support such registration. We contemplate that, in such cases, a prerequisite to registration would be a certification by the Secretary of Health, Education, and Welfare to the Secretary of Agriculture that such method is acceptable and that, where a food is involved, the data adequately show (or the conditions of use are such) that no residue is to be expected.

There should also, in our opinion, be a provision for canceling registration at any time we find that the original conclusion about "no residue" is found to be in error or if a previously established tolerance is reduced. We, of course, do not contemplate that such cancellation would be called for on the basis of an occasional misuse.

Finally, we believe that the confidentiality provisions of the bill should be revised to make it clear that data in an application for registration may be made available at any time to the Department of Health, Education, and Welfare, or to any other Government agency consulted by the Secretary of Agriculture.

I have tried to touch on the highlights of the views of the Department. However, Assistant Secretary Cohen has discussed these proposed changes in detail in his report on the bill, which I understand is dated today.

The Bureau of the Budget has asked that we point out to you, Mr. Chairman, that while that office offered no objection to this report they have under study the relationships between the Food and Drug Administration and the pesticide regulation people of the Department of Agriculture, and they expect that a report on this will be forthcoming soon.

Thank you.

Mr. JONES. Thank you, Mr. Kirk. As I understand it, you do have difficulty sometimes in determining the authority between the two departments, in other words, while the Department of Agriculture may approve a product that later on, say, by misuse particularly of the product, may present a problem with the Department of Health, Education, and Welfare, where it involves a food product?

Mr. KIRK. Yes, sir.

Mr. JONES. In delineation of authority, particularly, as to residues, in the handling of the product before it is marketed, for example, such as apples, where it requires washing of the apples, products like that, that we get into such difficulty. This is going to be one of the difficult areas in this matter and will require some careful consideration. And we will give careful consideration to the suggestions you have made. I know that it will be the subject of discussion when we get into executive session. Mr. Johnson has a question.

Mr. JOHNSON of Wisconsin. Several years ago when the Secretary of Health, Education, and Welfare put the clamps on the cranberry crop, did they not experience difficulty later with the product?

Mr. KIRK. Yes, sir. The product was amino triazole, and it was supposed to be so used that it would leave no residue. Therefore, there was a registration of the pesticide. And under the procedure operating there was no requirement in the law that the manufacturer supply an adequate method of examination. Then the growers misused the product.

Mr. JOHNSON of Wisconsin. Under the legislation that we have before us, it would be registered and everything would be okay, so far as the Department of Agriculture is concerned, is that correct?

Mr. KIRK. On a no residue basis.

Mr. JOHNSON of Wisconsin. On a what?

Mr. KIRK. On a no residue basis.

Mr. JOHNSON of Wisconsin. There is nothing in the bill before us that has anything to do with the residue, is that correct?

Mr. KIRK. That is right.

Mr. JOHNSON of Wisconsin. And your idea is to include that in the legislation so that when the manufacturer submits his product for registration he will have to show, also, that there is no residue left on the crop?

Mr. KIRK. And that we would get an opportunity to review that data and, also, review the method of examination.

Mr. JOHNSON of Wisconsin. How much would that slow up the registration, 6 months to a year?

Mr. KIRK. I would say no. I do not think that it would slow it up materially unless, of course, there is something wrong with the method or—

Mr. JOHNSON of Wisconsin. I have heard a lot about this cranberry situation. How did we become aware of it?

Mr. KIRK. We became aware of it by finding the amino triazole in the product. Our field people, of course, are very alert as to what is going on in the several districts. And when we find pesticide chemicals being used according to directions then we are happy. When we find that there are misuses or apparent misuses then we have to check to see whether or not there is, in fact, any residue that should not be

there. This applies, of course, both to products for which we have tolerances and to those for which we do not have tolerances.

Mr. JOHNSON of Wisconsin. When did they find that in the cranberries?

Mr. KIRK. After the harvest. That would be in November.

Mr. JOHNSON of Wisconsin. And they sprayed in the spring of the year?

Mr. KIRK. As late as June in some areas. Apparently, it is a wonderful weed killer, but it did a lot of damage.

Mr. JOHNSON of Wisconsin. Thank you.

Mr. BEERMANN. Some weed killers make crops grow, do they not?

Mr. JOHNSON of Wisconsin. This was used in the cranberry bogs. They were supposed to spray in the fall, but some of the growers sprayed in the spring. When they started to put the cranberries on the market, the Food and Drug Administration found this residue on the cranberries.

Mr. KIRK. That is right, sir.

Mr. JOHNSON of Wisconsin. Then they investigated the entire cranberry crop. They were carefully checked after that before they were sold.

Mr. KIRK. There was a great deal of checking.

Mr. BEERMANN. We use some weed killers that stimulate excessive growth.

Mr. KIRK. Those are the hormones, like 2, 4-D.

Mr. JONES. Are there any further questions? Mr. Matsunaga?

Mr. MATSUNAGA. No questions.

Mr. JONES. Mr. Rosenthal?

Mr. ROSENTHAL. No questions.

Mr. JONES. Mr. Dole.

Mr. DOLE. As to the provisions you suggest here, has there been agreement with the U.S. Department of Agriculture?

Mr. KIRK. There has been no formal discussion. I do not believe that the Department of Agriculture is wholly in accord with what we propose.

Mr. DOLE. If there is a question between the two Departments, who has the last word?

Mr. KIRK. We do all of that all of the time in connection with the formulation of tolerances. We get an opportunity to review the residue data. And so do they. As a matter of fact, under the Food, Drug, and Cosmetic Act they express to us an opinion as to whether or not the residue reasonably reflects what would be expected from the type of directions which the manufacturer proposes for his label. We get that from them in an advisory basis before we go ahead and work on the matter of determining whether or not we can set a tolerance. We work very closely with the Department of Agriculture. We have for many years, in my own experience. We get along well with them.

We have agreements in several areas which work out splendidly, but here we have a situation, as we see it, where the one thing we need is a method of analysis, because that is paramount when you

are going to look for something, you have to know how to find it, and these compounds that are involved are pretty complicated chemical structures. And there is, as best that we can find out, no provision in the law which would require the manufacturer to submit such a method where he is not seeking a tolerance. He says that there is no residue when used as directed. So, he does not have to submit a method. We think that the law ought to require him to do so.

Similarly, since we are responsible for the safety of the finished product going to you and the rest of the public we ought to have an opportunity to look over the residue data and see whether or not there is something about it that someone else may have missed.

Mr. DOLE. Could it mean additional cost of Federal employees; would it involve that?

Mr. KIRK. I think that there would be more cost to the Department of Health, Education, and Welfare to review these things. There is no question in my mind about that. But we think that it is necessary.

Mr. DOLE. In other words, up to a certain point you and the Department of Agriculture would do the same things?

Mr. KIRK. Essentially we would be doing the same thing.

Mr. DOLE. You would be doing the same thing?

Mr. KIRK. On a no residue registration as we do in tolerance setting. And some of these tolerances, of course, are pretty low. We have tolerances as low as one-tenth of a part per million for some pesticide chemicals.

Mr. JONES. I think what we are involved with here is that you have jurisdiction over the food additives or preservatives and the things that go into food and you, also, have the authority to take from the market food products which do show that they have residues or other things that would be harmful to the public. And in this proposed amendment you would want to extend that authority to give you the right of turning down the registration where you believe that the residue would affect the crop. As it is now you do not have the authority to stop the use of the product, but you have the authority to take the product off the market after it has once become contaminated.

Mr. KIRK. That is right.

Mr. JONES. That is where we are going to get into this jurisdictional problem. I hope that we do not have to have a board of arbitration. I hope that the U.S. Department of Agriculture and the Department of Health, Education, and Welfare can get together and not leave it to this committee to settle, because we are like anyone else, we would like to have it resolved before it comes to us.

Are there any other questions? If not, we want to thank you.

That completes the witness list that we have for today. We will meet at 10 o'clock in the morning. And if everyone is here promptly, we perhaps can conclude this list tomorrow and eliminate the necessity of another day of hearings.

(Whereupon at 12 noon, the committee adjourned to reconvene at 10 a.m., Thursday, August 22, 1963.)

REGISTRATION OF ECONOMIC POISONS

THURSDAY, AUGUST 22, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DEPARTMENTAL OVERSIGHT
AND CONSUMER RELATIONS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 1310, Longworth House Office Building, the Honorable Paul C. Jones (chairman of the subcommittee) presiding.

Present: Representatives Jones (presiding), Hagen of California, Johnson of Wisconsin, Matsunaga, Dague, Harvey of Indiana, Dole, and Beermann.

Also present: Representatives Abbitt and Rosenthal.

Christine S. Gallagher, clerk; and John J. Heimbarger, general counsel.

Mr. JONES (presiding). The subcommittee will come to order.

This is the second day of the hearings of the Departmental Oversight and Consumer Relations Subcommittee of the Committee on Agriculture which is meeting to consider bills H.R. 6828 by Mr. Rosenthal, H.R. 6913 by Mr. Dingell, and H.R. 7336 by Mr. Halpern. We have a long list of witnesses today.

We will now call as our first witness Congressman Dingell, who is here.

We will be glad to hear from you at this time.

STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. chairman, for the record my name is John D. Dingell. I am a Member of Congress from the 15th Congressional District of Michigan.

I wish to express my deep appreciation to the subcommittee for the privilege of being here to testify briefly on H.R. 6913, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to provide for labeling of economic poisons with registration numbers and to eliminate registration under protest.

For a long time, Mr. Chairman, I have been interested in the problem of pesticides and adequate protection of the public health while still permitting an intelligent and very necessary use of these same devastating poisons.

The genesis of H.R. 6913, of which I am sponsor, and other bills now before this subcommittee is a report of the President's Advisory

Committee which made a number of recommendations based upon the finding, and I quote:

The panel has found that decisions on safety are not as well based as those on efficacy, despite recent improvements in the procedures required by the Federal Food, Drug, and Cosmetic Act for the establishment of safe tolerances for pesticide residues on food.

When tolerance has been fixed by the Food and Drug Administration, the Department of Agriculture registers the pesticide which then is lawful for marketing with approved labeling. No pesticide can lawfully be shipped in interstate and foreign commerce without Department of Agriculture registration, because of an early provision in the law; however, the Department of Agriculture must allow registration under protest upon written demand of a petitioner following refusal to register by the Department of Agriculture. Under present circumstances, a purchaser is unable to distinguish a pesticide registered under protest from one which has been accepted for registration because the label carries no indication of the status of a particular pesticide. It was a specific recommendation of the President's Science Advisory Committee that the protest registrations be eliminated and that every pesticide formulation carry its official registration number on the label.

This legislation is intended to accomplish those ends and to close a very important gap in consumer protection. The bill requires a change of the former standard, which was a device really written into the act to guarantee judicial review. The burden under the old law was upon the Department of Agriculture, and procedurally the proposed statute switched to the manufacturer the burden of proving both effectiveness and safety when the pesticide is used as directed. The provisions of the proposed statute reach the gray area where the company has not adequately satisfied the Government of safety, but where lack of safety is also not clearly established.

This amendment, in effect, brings practices in the Department of Agriculture, with regard to pesticides, in conformity with the new changes in the Food, Drug, and Cosmetic Act, with regard to drugs, color additives, and food additives, recently enacted by the Congress.

Important in the bill is the requirement that the registration number appear on the label of the pesticide. This of course eases the work of the inspectors of the Food and Drug Administration and also the work of the inspectors of the Department of Agriculture. It also affords an added measure of protection to the consumer and an assurance that the substance really is tested and safe according to the labeling on the commodity.

A word of justification for the legislation appears peripheral, but might be useful to complete the record.

Recently, chemical pesticides became the newest member of the billion-dollar market class. In 1962, sales of pesticides reached a record \$1.04 billion: 9.4 percent higher than the \$953 million spent in 1961 and almost 100 percent higher than 1952 sales.

Chemical Week anticipates that the market for these commodities will not slacken during the next decade and, in fact, by 1975, chemical toxicants should be a \$2 billion market at the consumer price level. By then, the total market of technical pesticide toxicant at the producer price level should be \$750 million.

Nearly half of this business is occupied by miticides, insecticides, and related materials. Herbicide sales will climb rapidly from \$105 million worth of basic materials in 1962—an increase of 31 percent over 1961—to \$271 million by 1975.

We are using thousands of tons of these highly toxic substances on millions of acres in publicly supported, privately supported, and joint programs. Individuals use vast amounts of these substances in their homes, in their gardens, and on their lawns.

Our knowledge of what these substances do lags far behind our ability to manufacture and to produce new and more devastating economic poisons.

The use of these substances, unless controlled in the most careful manner, can destroy fish, wildlife, and plant resources of enormous value for today and for the future. The effect of these substances on the human body is not just short term but of lengthy duration, and use of these substances without the utmost care can have enormous impact, not just upon the user but upon hundreds and even thousands of innocent people, who unknowingly, may be compelled to ingest these substances through food, drinking water, air, and environment generally.

It is for these reasons that it is of the utmost importance that H.R. 6913 be enacted at an early time.

I might add, Mr. Chairman, to my comments here that I believe that the Nation is very much concerned about these pesticides, and that they be carefully used. There are a large number of reports of deaths. The President's Advisory Committee indicated that there were approximately 150 a year coming from these pesticides.

There are large numbers of poisonings and illnesses which are not directly traceable to these pesticides, but which are, I think, a very direct result of the use or of some association with these substances.

I do not seek, and I do not believe any of these sponsors of this legislation seek, to outlaw or to prevent the use of these substances. We merely seek to establish a pattern of law under which every possible protection is afforded to the consumer and to the user. And I think that this is a very important and very high duty that is imposed upon us.

It would be fair to point out that these substances live in the soil for many, many years. They live in clothes for many, many years when the individual is exposed to them. They are not necessarily removed merely by washing. They have a half life which is measured in the same way that atomic radiation is measured, because of the very lengthy duration of their existence, and I think that this is a very interesting point; because, once applied to the soil or to fruit or vegetables, or once they become applied to, or attached to, a part of the household, to kitchen utensils and something of this sort, they may exist for a very long time in that environment with considerable danger to the humans and to other living organisms which exist in the area.

They have been found to create liver disorders. They have been found to create disorders of different kinds in different parts of the human body. Dr. Hueper, of the National Cancer Institute, found

that in large numbers of instances the substances are highly carcinogenic or cancer producing.

We do not advocate that they not be used. We simply advocate that they be used, under circumstances which will guarantee to the maximum degree possible, consistent with the use of the substance—that they be safely, wisely, and intelligently used. To this end we want the person who uses them, in reliance upon the good name of the manufacturer to have an opportunity to know he is using substances which are generally safe to him and to those who will be affected when used according to the labeling.

Mr. JONES. We want to thank you, Mr. Dingell, for your contribution here. We are all aware of your interest, particularly in the fish and wildlife field, and the amount of work that you have done in this field and in water pollution, and other things of a like nature. And, as you have pointed out here, some of the things that the committee should take into account when it takes this up in executive session. I think that we can say that the committee appreciates the great danger that exists, and we are anxious to cooperate in every way that we can, not only to call attention of the public to this danger but to see that these products are properly labeled.

Are there any questions?

Mr. JOHNSON of Wisconsin. You do not mention it anywhere in your statement, but I take it that your bill is the same as H.R. 6828, introduced by Congressman Rosenthal?

Mr. DINGELL. I understand that all three of the bills before the committee are identical and that they are identical to the bill sponsored by Senator Ribicoff and others in the Senate.

Mr. JONES. Are there any further questions?

(No response.)

Mr. JONES. Thank you very much, Mr. Dingell.

Mr. DINGELL. Thank you.

Mr. JONES. We have the Honorable Seymour Halpern, a Member of Congress, who is the author of H.R. 7336. We appreciate your being here, and will be glad to hear from you now.

STATEMENT OF HON. SEYMOUR HALPERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HALPERN. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to appear before the committee this morning, to testify in support of this legislation which I am privileged to have joined in sponsoring, my bill being H.R. 7336. It is identical with those introduced by our distinguished colleague, Mr. Dingell, the previous witness, who sponsored H.R. 6913, and by my able colleague from New York, Mr. Rosenthal, who sponsored H.R. 6828.

I particularly want to compliment Mr. Rosenthal, who represents the district adjoining mine in the great county of Queens, for his outstanding work in this field. I am certain that his enlightened testimony yesterday contributed invaluable to the committee's evaluation of this legislation.

I have long advocated legislation in this field, Mr. Chairman. For a number of years as a State senator in New York, I was very active

on a State level on this subject, and now, as a Member of Congress, I have been particularly interested in this subject.

The purpose of this legislation is to end the practice of protest registration. The bill, if approved, will keep unduly hazardous pesticides off the market, and out of the hands of unsuspecting persons.

Under the Federal Insecticide, Fungicide, and Rodenticide Act, a manufacturer who wants to market a pesticide applies to the Department of Agriculture for registration. The Department reviews the application, to determine whether the product is safe, and whether the labeling is proper. However, section 4(c) of the act provides that, if the Department disapproves the product, the manufacturer may market the product under a procedure called "protest registration."

This simply means that the Department of Agriculture can determine that a product, as submitted, is too hazardous or ineffective to be allowed on the market; yet, the same product can be sold to the public until the Department is able to develop performance and toxicity records, and take legal action to remove it from the market. Under these conditions, the purchaser of a pesticidal product cannot distinguish such a product from one which has been accepted for registration, because the label does not carry any indication of its unsanctioned status.

The only remedy left to the Government, after unduly hazardous or ineffective pesticides have been placed on the market, is to bring court action to have them removed. This may not occur for a great length of time, and until it does, the public continues to be endangered or deceived by the product. This has happened before, and there are products marketed today under protest that have been disapproved by the Department of Agriculture. The following is a brief summary of pesticides marketed under protest, as of June 1963:

Lindane pellets for use in bug-death vaporizer is manufactured by B. D. Products Corp., Rialto, Calif. This product was registered under protest on January 28, 1960, because the label failed to carry the warning "not for home use."

Algumycin "200" and Algumycin "300" swimming pool algaecides are manufactured by the Great Lakes Biochemical Co., Inc., Milwaukee, Wis. These products were registered under protest on December 4, 1962, because the use of these mercury compounds in swimming pools as directed on the label is not considered safe.

Perma-Guard for treatment of alfalfa crown for seed is manufactured by Phoenix Gem, Inc., Phoenix, Ariz. This product was registered under protest on March 25, 1963, because the product is not effective for the purpose stated on the label.

Hari-Kari neodane pellets is manufactured by the Neodane Co., Torrance, Calif. This product was registered under protest on April 9, 1963, because the label failed to carry the warning "not for home use."

Lindane tablets (bug pills and vap tabs) are manufactured by the Vapor Chemical Co., Jackson, Mich. This product was registered under protest on May 28, 1963, because the label failed to carry the warning "not for home use."

This situation is aggravated by the failure of the Department of Agriculture to publicize these products registered under protest.

The distinguished Senator from Connecticut, Mr. Ribicoff, in introducing his bill on pesticides in the other House, commented on the Department's reluctance to reveal the names of these articles to the press when reporters specifically inquired about them.

The dangerous loophole in the Federal Insecticide, Fungicide, and Rodenticide Act must be closed. When the Secretary of Agriculture testified before the Senate Subcommittee on Reorganization and International Organizations on May 23, 1963, he strongly favored a change in the law to close this loophole. The President's Science Advisory Committee issued a report on the "use of pesticides." The Committee recommended amendments to eliminate protest registrations and to require every pesticide to carry its official registration number on the label.

H.R. 7336 would close the loophole in existing law that permits this practice of protest registration. This means that premarketing clearance would be mandatory for all pesticides without exception. It deletes the provisions now in the Federal Insecticide, Fungicide, and Rodenticide Act for registration of pesticidal poisons under protest and prescribes the procedures to be followed in refusing or in canceling registrations.

This bill provides for referral of the question of eligibility of an economic poison to an advisory committee; for public hearings when requested with respect to the Secretary of Agriculture's action after consideration of the reviews of the advisory committee; and for judicial review of the order issued by the Secretary of Agriculture following such public hearings. This procedure is generally similar to that followed under the provisions of the Federal Food, Drug, and Cosmetic Act with respect to pesticidal chemicals.

The bill also gives the Secretary of Agriculture the authority to require that every pesticidal formulation carry the pertinent registration number on the label.

The need for the proposed legislation contained in H.R. 7336 is obvious. Nearly 180 million pounds of pesticides, valued at more than \$1 billion are reportedly used in the United States every year. Over and above the publicized destruction of fish, birds, and other wildlife through the indiscriminate use of chemical poisons to eliminate pests of economic concern to man, there is mounting evidence of serious contamination of the natural environments. The use and availability to the public of dangerous chemicals, pollutants of our soil, water, and air must be brought under greater control. A first essential to achieve greater control is to eliminate the practice of protest registration of unduly dangerous chemical poisons. The need for this proposed legislation to tighten control over registrations of chemical pesticides has been recognized by the executive branch, by responsible representatives of industry, and by the scientific community.

Accordingly, Mr. Chairman, I urge the subcommittee to support the enactment of the provisions of this legislation. I want to thank you again for giving me this privilege to join in the hearings which are most commendable. And again I wish to compliment the committee for its fine work in this field.

Mr. JONES. We appreciate the information you have given us, and your views on this bill.

Are there any questions?

Mr. Dole?

Mr. DOLE. I appreciate your statement. You illustrate the link between rural and urban Members of Congress. I trust urban Members might come up with a good wheat program.

Mr. HALPERN. We will take it under advisement. [Laughter.]

Mr. JONES. If there are no further questions, we thank you very much.

Mr. HALPERN. Thank you again.

Mr. JONES. Mrs. Leonor K. Sullivan, a distinguished Representative of the State of Missouri, was here. She has an interest in this problem and has had for a long time, and has been quite active in relationship to it, in connection with the Food, Drug, and Cosmetic Act. However, she had to go to another meeting and has presented a statement which, without objection, I would ask be placed in the record at this point.

(The document referred to follows:)

STATEMENT OF HON. LEONOR K. SULLIVAN, A REPRESENTATIVE IN CONGRESS, FROM
THE STATE OF MISSOURI

THE "BURDEN OF PROOF" ON PESTICIDES

Chairman Jones and members of the subcommittee, I am strongly in favor of the legislation now before you to require industry, rather than the Federal Government, to shoulder the burden of proof in connection with the marketing of pesticides which may be unsafe for use as intended.

This is an old story—an old controversy—as far as consumers are concerned. It used to be true in the Food, Drug, and Cosmetic Act that a doubtful or dangerous chemical additive could be used in foodstuffs until the Government was able to prove it unsafe. In 1958, we changed that, in the Food Additives Act, by placing on industry the burden of proof to establish in advance the safety of any additive used in food.

In 1960, we put an anticancer clause into the law affecting coloring matter used in foods, drugs, or cosmetics. The burden of proof is on the manufacturer. Last year, we passed the far-reaching Drug Control Act so that the consumer would have far greater protection in the use of new drugs. The burden of proof is on the manufacturer.

We still need such a burden-of-proof shift of emphasis in our laws covering the safety of cosmetics, and of therapeutic devices. I have introduced omnibus legislation carrying out these objectives, and I hope we can pass it in this Congress. As pending before another committee, it would put the burden of proof of safety on the manufacturer.

The same principle of burden of proof is before this subcommittee now in connection with pesticides and economic poisons. The pesticides serve a very important economic purpose. In her tremendously effective book on this subject, Rachel Carson made clear that pesticides often serve a very useful purpose and that it is the improper or unsafe use of these poisons that she opposes. From the response her book elicited from residents of my congressional district, and others in the St. Louis area, I know that there is widespread public concern, which I share, over the pesticides problem.

Under present law, if the Department of Agriculture refuses to register a product for sale because it is not convinced the product is safe or effective, the manufacturer can nevertheless utilize a loophole in the law to place the product on sale anyway, and for an extended period, until the Department can then provide proof of the product's shortcomings. This takes extensive research and, more importantly, it takes time. In the meantime, great damage can be done to the unwary consumer or to public health and safety.

We used to have the same problem in connection with food additives and non-coal-tar color additives. We still, as I said earlier, have it in cosmetics and therapeutic devices. The burden of proof of safety should always be on the manufacturer. These economic poisons are seldom innocuous. They can often kill humans as well as insects. They can contaminate water supplies and meat and vegetable supplies. They must be treated with the respect their danger justifies. We must close any loopholes in the law which permit manufacturers to market products they cannot prove are safe in use in the manner intended. The burden of proof should not rest on the Government, because great damage can be done during the period the Government is developing the data necessary to remove a product which should not be marketed.

I support this legislation and urge its approval.

Mr. ROSENTHAL. Mr. Delaney asked me to tell you that he, too, has to attend another meeting, one of the Rules Committee, and could not be present. I would like permission to insert his statement into the record at this point.

Mr. JONES. I was going to mention that, Mr. Rosenthal. The fact is that he talked to me also. And without objection, his statement will be inserted in the record at this point when received.

(The document referred to follows:)

STATEMENT OF HON. JAMES J. DELANEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, members of the subcommittee, it is a privilege to appear before this distinguished body on behalf of H.R. 6828, introduced by my colleague from New York, Mr. Rosenthal. As he has mentioned to you, our congressional districts are adjacent to one another. I am happy to note that we also stand together in our concern for consumer protection.

Considering the subject matter of this bill and the membership of the committee, this hearing is something of a reunion. Not so many years ago, Mr. Chairman, you, the gentleman from Mississippi, Mr. Abernethy, and I sat together on the Select Committee To Investigate the Use of Chemicals in Foods and Cosmetics and explored similar problems.

The good legislation that has come out of those hearings is a continuing source of gratification to me.

I believe that H.R. 6828 is good consumer protection legislation. It would accomplish two basic improvements in the Federal Pesticide, Fungicide, and Rodenticide Act: The labeling of economic poisons with their USDA registration numbers and the elimination of the so-called protest registration of pesticides by the Department of Agriculture.

The first provision, to provide for the showing of registration numbers on labels, will be of great public benefit. At the time of the select committee hearings, there were over 30,000 pesticidal formulations registered with the Department of Agriculture and the number has grown steadily since. The variety and complexity of combinations greatly increases the problem of finding antidotes to counteract pesticide poisonings.

The prominent display of the registration number will provide an immediate and accurate guide to the proper treatment of the poisoning, particularly in those cases where antidote instructions or statements of contents have been separated from or defaced on containers. Such display will also serve the more general purpose of showing the purchaser—at a glance—that the product has been checked by the Government and is safe for use as directed.

The second provision of the bill, the elimination of protest registration, will be of major benefit in that it will close a large loophole in the law and eliminate the potential danger of an unscrupulous operator marketing a harmful product.

At the time that the protest registration was developed, prior to the enactment of the law in 1947, it was, as I understand it, thought to be a reasonable method of protecting the manufacturer against arbitrary decisions by the Government. However, the situation that has developed is highly unsatisfactory and not in accord with other consumer protection legislation of the past decade.

Under the Food, Drug, and Cosmetic Act we require manufacturers to prove food additives safe before they are used. We require manufacturers of drugs

to show that their products are safe and effective before they are allowed on the market. Yet, under the Federal Insecticide, Fungicide, and Rodenticide Act, the Department of Agriculture must allow manufacturers to produce and sell products the safety of which is in doubt. The Department is further required, at the expense of the taxpayer, to launch complex and time consuming studies to develop sufficient scientific evidence to justify the removal of the products from the market.

To my knowledge, this act and the cosmetic provisions of the Food, Drug, and Cosmetic Act are the two principal remaining examples of consumer legislation where the manufacturer is allowed such irresponsibility. I am supporting this bill and have introduced amendments to close the similar loophole in the cosmetic provisions.

In regard to the protest registration provision, Mr. Chairman, I would like to make only one further comment. I believe that it would be beneficial to amend the bill to terminate all existing registrations under protest as of the effective date of this legislation.

H.R. 6828 deals with a gray area in large part—economic poisons which show neither that they are definitely safe or definitely unsafe. In cases of this type, I believe that the protection of the consumer is paramount. This bill, while providing adequate safeguards for the manufacturer, recognizes the importance of that consumer protection. I heartily endorse the legislation.

Mr. JONES. The next witness we will hear is Mr. Parke C. Brinkley, president of the National Agricultural Chemicals Association.

We will be pleased to hear from you at this time, Mr. Brinkley.

STATEMENT OF PARKE C. BRINKLEY, PRESIDENT, THE NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION; ACCOMPANIED BY ROBERT L. ACKERLY, ESQ., CUMMINGS & SELLERS, WASHINGTON, D.C.

Mr. BRINKLEY. Thank you very much, Mr. Chairman and gentlemen. I have with me Mr. Robert L. Ackerly of the law firm of Cummings & Sellers in Washington, our general counsel. Mr. Ackerly is quite familiar with the details of the legislation, and we might very well find him handy in helping to answer some questions.

My name is Parke C. Brinkley. I am president of the National Agricultural Chemicals Association. This association was formed in 1933 as a nonprofit trade association to promote and represent the interests of manufacturers and formulators of agricultural pesticides and related chemicals. The 114 member companies of this association produce 90 percent of the basic and 85 percent of the formulated agricultural pest control chemicals produced in the United States. I am presently completing my first year of service with this association; however, in my former position as commissioner of agriculture for the Commonwealth of Virginia, I had occasion to know the association and its work for the industry. The association has always conducted its affairs in a manner consistent with the public interest and with an attitude of cooperation with the regulatory agencies of the Federal, State, and local governments.

In the middle 1940's when the present Federal Insecticide, Fungicide, and Rodenticide Act was being considered by the Congress, this association actively supported it. Later, this association had the opportunity to help develop and support the Miller Pesticide Residue Amendment to the Federal Food, Drug, and Cosmetic Act, which regulates and limits the allowable residue of pesticide chemicals on raw agricultural commodities. Again in 1959, when the scope of the

Federal Insecticide, Fungicide, and Rodenticide was enlarged by act of Congress, this association took an active part in developing and supporting the amendment.

Our comments and views on H.R. 6828, H.R. 6913, and H.R. 7336 are submitted to the committee this morning from the viewpoint of cooperation with the committee and the Department of Agriculture in improving the Federal Insecticide, Fungicide, and Rodenticide Act.

We will submit with this statement some amendments which we believe will clarify the procedures provided in the bill, and with these amendments we support and endorse H.R. 6828.

This bill would accomplish two primary changes in existing law:

First, the Secretary of Agriculture will be authorized to require the Federal registration number of a pesticide to appear on the label. Each product which is registered by the Department of Agriculture receives a registration number. Existing law prohibits any reference on the label or in the labeling to the registration of the product by the Department of Agriculture.

This association has for several years urged that the law be amended to authorize the Secretary to require or at least permit the registration number to appear on the label. This has become more important since the approval of the Miller Pesticide Residue Amendment to the Federal Food, Drug, and Cosmetic Act. The appearance of the Federal registration number on the label will assure growers and users that the product has been registered by the U.S. Department of Agriculture.

Registration of a pesticide intended for use on growing crops is also subject to the approval of the Food and Drug Administration. That agency establishes tolerances for residues of the pesticide chemical on raw agricultural commodities. The Department of Agriculture requires directions for use on the label, which if followed, will leave a residue remaining on the crop at the time of harvest, within lawful limits of the tolerance for the pesticide chemical. The directions must also satisfy a zero tolerance, as well as a registration on a no residue basis. We think it highly desirable that growers be advised at the time of purchase that the product has been registered with the Department of Agriculture and that the Food and Drug Administration has established a tolerance for any residue that will remain on the crop. The appearance of the registration number on the label is a good way of accomplishing this.

There are some hazards to the industry in this feature of the bill. At the present time, 47 States require registration of pesticides in addition to the U.S. Department of Agriculture. The States generally follow the pattern of the Federal act and regulations. If the States should decide to require their registration number on the label in addition to the Federal number, the industry could be faced with printing 48 different numbers on a label. This would be impossible with many packages. It would also be quite unnecessary. We suggest, therefore, that the committee report on this bill emphasizes that the purpose in allowing the Secretary to require the registration number on the label is to give assurance to growers that the product has been registered by the U.S. Department of Agriculture, and to the extent necessary has been approved by the Food and Drug Administration for use on the crops.

listed on the label. If this point is made clear, perhaps the States will not find it necessary to adopt this requirement with respect to State registration numbers. Thus, while industry supports the principle that the Federal registration number appear on the label, it would be strongly opposed to the States following suit.

The second purpose of this bill is to eliminate registration under protest. The existing law, in section 4(c), provides that if it appears to the Secretary that an article which is submitted for registration does not appear to comply with requirements of the act, the Secretary is required to notify the applicant and give him an opportunity to make the suggested corrections.

In the event that the applicant does not agree with the Secretary that the corrections are necessary, the applicant may request that the Secretary register the article under protest. This registration is accompanied by a warning from the Secretary of the apparent failure of the article to comply with the act, as provided in section 4(c) of the act. Registration of an article is not a defense to any of the prohibited acts set forth in section 3.

If the Secretary feels that a product registered under protest does not comply with the act, he is free to institute a seizure proceeding to have the product condemned.

H.R. 6828, in eliminating registration under protest, would substitute a procedure for judicial review of the Secretary's action with respect to the registration of an article under this act.

A procedure has been developed under the Miller pesticide residue amendment, the food additives amendment, and the color additive amendment to the Federal Food, Drug, and Cosmetic Act to provide an applicant an opportunity for objective review of data and other material by an advisory committee if the Secretary does not agree with the applicant's evaluation of the data submitted. A similar procedure is provided in H.R. 6828 with respect to registration under the Federal Insecticide, Fungicide, and Rodenticide Act. If the Secretary of Agriculture should not agree with an applicant as to whether an article should be registered, the bill provides that the applicant may request the issue be referred to an advisory committee to be appointed by the National Academy of Sciences.

After the advisory committee has reviewed the data and material filed in support of the application, it is requested to report its recommendations to the Secretary who, thereupon, shall issue an order with respect to the registration of the article based not solely on the recommendations of the advisory committee but on an evaluation of all the data before him, including the recommendations of the advisory committee.

The bill permits an opportunity for a hearing if objections are filed to the Secretary's order, and for judicial review of the final action of the Secretary with respect to the application for registration, through a procedure which experience has shown functions well in this area.

One weakness in registration under protest was that the burden of proof with respect to the Secretary's action was shifted to the Secretary, in a court proceeding. Under this bill, the burden of proving that the article complies with the requirements of the law remains

with the applicant or registrant throughout the entire administrative and judicial procedure.

After careful review of H.R. 6828, this association has prepared a few amendments which it would like to submit to the committee, with a request that these amendments be approved by the committee when it reports the bill to the House. The amendments in detail are attached to my statement. For the most part, they deal with procedural matters and clarifying some of the procedures set forth in the bill. A detailed explanation is also attached and accompanied the amendments.

These amendments establish time limits within which the Secretary must act, at certain stages of the administrative procedure, and follow the pattern adopted by Congress in the Miller pesticide residue amendment, food additives amendment, and color additive amendment to the Federal Food, Drug, and Cosmetic Act. One amendment also adopts the standard of judicial review approved by Congress in the food additives amendment, and adopted by reference in the color additive amendment and the Federal Hazardous Substances Labeling Act.

If any questions should develop with respect to the suitability or propriety of these amendments or their purpose, we would be glad to discuss them in detail with the committee or with members of the committee staff. We believe that they are sound and will improve the bill, and will promote the purposes and objectives of the bill.

We appreciate the opportunity to appear before your committee and explain our views on this bill. We endorse and support the principles and objectives of this bill. We believe that this substitute procedure for registration under protest is in keeping with modern developments of administrative and judicial procedure. We assure the committee of the complete cooperation of this industry in the continued enforcement of the act and the amendments proposed by H.R. 6828, if it is approved by the Congress.

Mr. Chairman, I have the amendments listed, and then immediately following that an explanation of the suggested amendments. Would you prefer that I run through them rapidly for you?

Mr. JONES. I think that if you would do so, Mr. Brinkley, it would help. And then if there are any questions as to the proposed changes in the proposed bills, we can go into those more thoroughly.

Mr. BRINKLEY. Amendment No. 1 is on page 2, line 18—before the word “cancel” insert the words “suspend or”.

Amendment No. 2 is on page 3, line 7, deleting the period after the word “Secretary” and inserting in lieu thereof a comma and the following words, “or in the alternative the applicant or the registrant may file objections to such notice and request a public hearing thereon. If a petition is not filed within 30 days requesting reference to an advisory committee or if a request for a public hearing is not filed within the time allowed for such filing, this notice shall become the final action of the Secretary with respect to the application or the registration.”

Amendment No. 3. This corrects a typographical error. Page 4, line 2—delete the word “in” and insert in lieu thereof the word “of”.

Amendment No. 4 is on page 4, lines 10 and 11, deleting the words

"make a report and recommendation to the Secretary as to the registration of the article." and insert the following, "submit a report and recommendations to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations."

Amendment No. 5 is on page 4, line 13—after the word "shall" insert a comma and the words "within 90 days after receipt of the report and recommendations of the advisory committee".

Of course, one of the purposes of substituting these provisions for the registration under protest is to encourage the moving through of these applications in the hands of the Department of Agriculture, and this simply puts a time limit on that to gage his movement.

And amendment No. 6 is on page 4, line 16, deleting the words "Any person adversely affected thereby" and inserting in lieu thereof the words "the applicant for registration, or registrant".

Mr. JONES. You say "any person adversely affected thereby"—in other words, that refers up here to this registration?

Mr. BRINKLEY. It refers to the appeal and lets anybody who wants to do it, whereas this amendment would confine it to the person whose company is actually involved in it.

Mr. JONES. What about the case of some person who might consider himself affected in a competitive manner by this—would that eliminate him from filing an objection; in other words, if a product is already on the market, and then some applicant would make an application for a new product, and if that party who had already a similar product felt that he was being adversely affected, would it not prevent him from coming in and filing an objection?

Mr. BRINKLEY. It would prevent him from filing an objection, yes, sir. He could, if he wanted to do so, file an application for a similar product, or something of that sort.

Mr. JONES. Suppose that a person already had his product on the market, and he was taking a precaution with his product that the new product was not taking, and it might place him in a position that would be adverse to the marketing of his product. I question this amendment on that ground. I want your comment on that. Would we be precluding him from coming in on that, and could not that work adversely to him?

Mr. BRINKLEY. That is a very good point to raise. I think that I will ask Mr. Ackerly to comment on it, to be sure, but I think that the competitor would not know in this case about it—the action that was being taken.

Mr. ACKERLY. Yes; that is right, Mr. Chairman. The application is confidential when it is first filed with the Department of Agriculture and, if a competitor had certain information that he felt was important at a later stage of the proceeding, he would be free to submit it to the Secretary of Agriculture.

The words in this bill were taken from the food additives amendment, primarily. You have an entirely different situation there. You have a grower concern or grower organization concern, as well as the chemical company. With a pesticide, however, you have the applicant or the registrant. We do not feel that this is a forum for competitive pressures to be of concern to the Secretary.

His obligation under the act is to see that the product meets the requirements of the law. If there are competitive problems to other companies, they can be settled in private or civil litigation. If it is a question of advertising or promotion it can be settled by the Federal Trade Commission. However, the Secretary of Agriculture has to make the final decision, based upon the entire record, and we feel that he should be able to avail himself of all of the evidence as is available and then make the final determination. In other words, this would not be an adversary proceeding before the Secretary between two companies, but merely an adversary proceeding of the applicant proposing his case to the Secretary.

Mr. JONES. I am concerned particularly about the labeling that would be on the product, as well as the instructions which would be a part of it. As I understand when this application is filed it is confidential within the Department and the public does not know it has been filed. They do not have access to the information that will be contained on the label or the instructions for its use, and material like that.

Mr. ACKERLY. Yes, sir. This bill provides that one of the amendments that we are going to suggest, amendment No. 9, would remove that restriction at the time that a public hearing is requested, or, at the time that the Secretary's action becomes final, so that it would not remove the confidentiality until there is a public hearing or until the Secretary's final action is taken. The bill provides in another section that detailed formula information is always held confidential.

Mr. JONES. I understand that. However, I could not understand about the labeling and the instructions for use and things like that. Of course, that sometimes makes a great difference in the marketing, particularly in competition between products, because the public usually looks for something that is the most easily used. Most of us do not like to read detailed instructions. And if those were eliminated it might affect the use of the product and it might make it more accessible to the public. That is what I had in mind there.

Mr. ACKERLY. If the committee approves our amendment No. 9, the data will be confidential only up to the point where a public hearing is requested, or if no public hearing is requested at the time that the Secretary's action becomes final with respect to the registration, which means it would be perhaps either on the order issued following the advisory committee or if no advisory committee is requested, his initial action will then become his final action.

Mr. JONES. We will want to take that up with the staff and probably with you before we take any final action.

Mr. HAGEN of California. Your amendment excludes the American Medical Association, for example, requesting public hearings?

Mr. ACKERLY. Yes; that is true.

Mr. HAGEN of California. It is merely a matter between the Department of Agriculture and the company?

Mr. ACKERLY. That is correct. If I may, it would not preclude the Secretary from taking advantage of all of the data that is available, nor the advisory committee from soliciting data from the American Medical Association or anyone else, but it does leave the responsibility solely with the Secretary.

Mr. HAGEN of California. But the public, in effect, would be excluded from participating?

Mr. ACKERLY. The public would be excluded from participating in this procedure; that is correct.

Mr. HAGEN of California. Other than in the public hearings?

Mr. ACKERLY. I think that they would also be precluded from appearing in other regulatory actions under the Food, Drug, and Cosmetic Act. Any person adversely affected has been construed pretty generally by the courts to mean a person who has a property interest which is adversely affected.

I would assume under general principles of legal procedure that any group that wanted to could file a petition either to intervene or to file a brief amicus with the Secretary or the court.

Mr. HARVEY of Indiana. I think that it is generally common knowledge that many of the trade-named pesticides have come about as a result of work by the research division of the Department of Agriculture. They have made these research findings available to the companies who, in turn, have marketed them under trade names.

It would seem to me, although I am not a lawyer, that in this instance, if such a condition is set up, in which the Secretary of Agriculture and the company in question are in this situation, that they would be both on the same side of the issue. Although I am not necessarily saying that there would be bad faith, it would seem to me, as mentioned by Mr. Hagen and Mr. Jones, that in instances of this kind it would almost lead to collusion.

Mr. BRINKLEY. Mr. Chairman, I do not care to belabor this point either. We would be delighted to discuss it further in private. There are thousands of these registrations or these applications for registration being made each year and it is an everyday affair; they are constant. It is necessarily an agreement between the Department of Agriculture, on the one hand, and the company who is making the application, on the other hand. They negotiate this. The Department of Agriculture is asking for the public in this. It is not something that lends itself to being a public matter for anybody and everybody to come in and look over the shoulder of the Department of Agriculture, so to speak, while this is going on.

Mr. HAGEN of California. As I understand your statement, under present law there is actually a prohibition against the appearance of the registration number on the label; is that correct?

Mr. BRINKLEY. Yes, sir.

Mr. HAGEN of California. Why would there be such a prohibition as such. What is the issue there?

Mr. JONES. If you will pardon me, that was brought out yesterday in the testimony of members of the Department. At that time they were opposed to it and now they have changed their position on that.

Mr. HAGEN of California. Why would they be opposed to it at one time?

Mr. JONES. It is all set out in the transcript. I think that if you will read the transcript you will get the information on that. That will be more enlightening than what we might bring out here.

Mr. BRINKLEY. Basically, as I understand it—

Mr. HAGEN of California. I would like to have Mr. Brinkley's reason.

Mr. BRINKLEY. They have been opposed to it because for fear that it would be used as a part of the advertising, with the thought that it might in some way carry with it the connotation that the Government was recommending a product.

Mr. HAGEN of California. That is the point I was getting to. Say that a company registers a pesticide, a fungicide, and something gets damaged thereby and he is sued. Is this registration a defense for the company?

Mr. BRINKLEY. You just are a little too deep for me. I suspect that I had better not comment on that.

Mr. JONES. In other words, on this protest registration it would have a number on there and it might indicate to the public the fact that they were given a registration number—although it was a protest registration—that it might carry, at least, in the minds of some people the connotation that it was being recommended by the Department. That is one thought that was brought out.

Mr. HAGEN of California. I am trying to ascertain whether or not the fact of a listed registration would exempt the manufacturer from tort liability in the event a farmer-user of the product were sued.

Mr. BRINKLEY. May I ask Mr. Ackerly to comment on that?

Mr. JONES. Yes.

Mr. ACKERLY. Mr. Chairman and Mr. Hagen, the law presently prohibits any reference to registration under this act on the label.

H.R. 6828 would add the phrase "other than the registration number assigned to the economic poison." So the general provision would still survive. It would permit only the registration number to appear on the label.

The act, also provides that registration is not a defense to any prohibited act. That survives in the law. So that the appearance of the registration number on the label would not make any change in the existing law as to the relationship between the company and the grower, or the company and the Department of Agriculture.

Mr. HAGEN of California. But a tort complaint—

Mr. ACKERLY. The registration is not a defense to any prohibited act; therefore, if the product is adulterated or misbranded, even though the number appears on the label, or if a grower's crops are damaged by the use of the product, the bill would not change the existing state of the law with respect to the grower's rights and the company's rights.

Mr. HAGEN of California. I was wondering if the appearance of the registration number on the label would relieve the company from tort liability and leave the farmer holding the bag.

Mr. ACKERLY. In my opinion it would not, sir. It would not change the state of the existing law a bit, so far as that is concerned.

Mr. ROSENTHAL. Mr. Brinkley, I want to compliment you and to commend you and your organization for this very responsible position, in supporting the bill. I have one or two other thoughts I should like to express.

I am sure that you have read the President's Science Advisory Com-

mittee report in that it states that there are 150 deaths a year resulting from the use of pesticides. Would you care to offer any comment on that statement?

Mr. BRINKLEY. Well, I would say to you, sir, that we are as conscious as anybody, and I think more conscious than anybody of this situation. The industry has worked strenuously and has cooperated with a great many other people in endeavoring to prevent these deaths.

The trend, as I understand it, is down, even though the use of pesticides has materially increased.

I think that the exposure to damage ratio is less in pesticides than with a great many other things I know of. And when put in perspective, I think, you will find that the deaths from the misuse of pesticides are quite small in comparison to some other things. For instance—this was brought out here yesterday—there is the subject of cabinet medicines where considerably more people, I understand, die per year from the misuse of aspirin tablets than from the misuse of all of the pesticides put together. A great many more people are killed each year by farm machinery than there are from the use of pesticides.

So as bad as they are and as hazardous as they are, we are working on them. And I think that when viewed in perspective the industry is to be congratulated on the improvement that has been made in the use of these very hazardous materials. Certainly, any material which can do the tremendous good that these materials do has got to carry with them some potential damage. And while there are a number of deaths alleged each year by their use, and I believe the President's Science Advisory Committee used the figure of 150 deaths, I think that it is also shown that there are a good many million lives saved each year by the use of these materials.

Mr. ROSENTHAL. I just wanted to develop the record, so that the House can act intelligently on this bill when they have it before them.

Do you agree specifically with the figure of 150 that the Committee reports?

Mr. BRINKLEY. I have no particular comment on that. I do not know where that figure came from.

Mr. ROSENTHAL. Subsequent to the issuance of the report—I think it was issued in March or April by the Committee—did you, at any time, initiate an investigation to determine the number of deaths and the accuracy of the reports and what these deaths might have been caused by?

Mr. BRINKLEY. I have seen no substantiating evidence from the President's Science Advisory Committee at all as to where that figure came from or what the breakdown is of those alleged deaths.

Mr. ROSENTHAL. You are of the opinion then that an investigation would not disclose any information or make available records as to the nature of any injuries or deaths sustained by the misuse of pesticides?

Mr. BRINKLEY. No, sir. The Federal Government and the State governments have the machinery for reporting that and they are the official keepers of the records.

Mr. ROSENTHAL. Did you happen to initiate any investigation among your member organizations to try to determine this information?

Mr. BRINKLEY. We have no facilities for doing that; no, sir.

Mr. ROSENTHAL. Have you tried to do that?

Mr. BRINKLEY. Any records that we would have would be hearsay. We are not interested in that kind of a record.

Mr. ROSENTHAL. These records that you say are hearsay, would they be from newspapers or where—from where would you get them?

Mr. BRINKLEY. It would have to be—if we got into this—it would have to be on the basis of getting information from the newspapers or from people, from something—we have no official reports, where the State governments and the Federal Government do have official reports.

Mr. ROSENTHAL. It seems to me that the registration number would be helpful in determining antidotes and the materials necessary to be treated in cases where someone has been exposed—in treating the people, because then antidotes would be available. I think it is important that the industry should get rid of such dangers.

Mr. BRINKLEY. We do that—we were, as I pointed out, very actively in this field of endeavoring to help educate the people on the proper use—to educate the people on methods of treatment—that sort of thing—we work very closely with the public health services in helping to make available to these poison-control centers about the country such information. All of the companies keep a person who is designated to aid with treatment through consultation whenever they can by telephone and so forth. Yes, we work very actively in this field.

Mr. ROSENTHAL. At any rate, to sum up, you are not in a position to refute the statement of the President's Science Advisory Committee report that there are 150 deaths attributable to pesticides?

Mr. BRINKLEY. Mr. Rosenthal, I have no way of refuting it, because I do not know what it is based on. They have not told us where they got the figure. If you will tell me where they got the figure, then I might be in a position to look at it.

Mr. ROSENTHAL. Did you ask them?

Mr. BRINKLEY. No. We asked for the substantiating evidence back of the President's Science Advisory report, and Dr. Wiesner told us that he could not make it available; that if we had any particular thing that we wanted to sit down and discuss with his scientists he would arrange for that, but there are a lot of things in the report that we do not know where the information came from or the work that it was based on. And this is one of them.

Mr. ROSENTHAL. Thank you.

Mr. JONES. It would seem to me that your association would be interested in this data if for no other reason than to present to the public the condition as to how and under what circumstances these people were killed by the use of these products. And I think just from my own knowledge of the use of these that in most cases it has been caused by a misuse. And I think your association might take some knowledge of that fact and could use it to help in the merchandising and the distribution of these chemicals.

Mr. BRINKLEY. Yes, sir. And we do, Mr. Chairman, but the thing you run into is the fact that I saw a statement from the Department of Agriculture for the same period that said 89 deaths were allegedly caused by the use of these materials. So you run into conflicting reports. We do follow these. We know not of a single incident where death was caused by the proper use of these materials. It has been a result of misuse, accidental use.

Mr. JONES. The President's Committee might have statistics that would be helpful on that.

Mr. BRINKLEY. Yes.

Mr. JONES. Do you want to go over the balance of these?

Mr. BRINKLEY. Yes. Amendment No. 7 would be the next one. This amends the bill on page 4, line 17, after the word "may" insert the words "within 60 days from the date of the order of the Secretary,".

Number 8 is on page 5, line 9, after the word "shall," insert the words "evaluate the data and reports before him,".

Then amendment No. 9 is on page 5, line 20, after the word "until," strike the remainder of that sentence and insert in lieu thereof the following: "A public hearing is held, or where no hearing is requested until the action concerning registration of the product becomes final."

That is the one we discussed just now when we were talking about No. 6.

Mr. JONES. Yes.

Mr. BRINKLEY. And No. 10 is on page 7, line 10, delete the words "by substantial evidence when considered on," and insert in lieu thereof the following: "by a fair evaluation of."

Mr. JONES. That is one that we might like to have more explanation of, because it seems to me that "substantial evidence" could be necessary in most any of these—they would have to have substantial evidence before they could make a fair evaluation, would they not?

Mr. BRINKLEY. Yes, sir. And may I again let Mr. Ackerly comment on that, please?

Mr. JONES. All right.

Mr. ACKERLY. Mr. Chairman, the fair evaluation of the record as a whole standard was first approved by the Congress in 1958 in the food additives amendment to the Federal Food, Drug, and Cosmetic Act. At that time the House Committee on Interstate and Foreign Commerce and the Senate Committee on Labor and Public Welfare looked into the question of the appropriate scope of judicial review very carefully. I would like to read a couple of paragraphs from the committee report which I think sums it up very well. I am reading now from Report No. 2284 of the 85th Congress of the Committee on Interstate and Foreign Commerce:

The committee has given long and careful thought to the problem of the scope of judicial review under this legislation. It was discussed exhaustively by several witnesses before the House subcommittee, including a Federal judge who testified on behalf of the Judicial Conference of the United States. "Your committee agrees with the House that the Secretary's findings of fact and orders should not be based on isolated evidence in the record, which evidence in and of itself may be considered substantial without taking account of contradictory evidence of possibly equal or even greater substance."

In the course of the scientific panel hearings the subcommittee was impressed with the wide range of scientific judgment factors which are involved in determining the safety of a food additive. We are faced with the same thing with pesticides. Considering the eminent qualifications of all of the scientists and experts who participated in the hearings, the scientific testimony of any one of the participants must be considered substantial evidence. Nevertheless, any conclusions based solely on the scientific judgment of any one of the participants, without taking into account contradictory scientific views expressed by other participants, cannot be considered conclusions based upon a fair evaluation of the entire record. Thereupon the committee recommended and the House approved the test fair evaluation of the record rather than the substantial evidence test.

The Senate committee report contains the following very brief statement:

The chairman of the House subcommittee that drafted and reported the bill, Hon. John Bell Williams, used the following words in explaining to the House the significant change in existing law. "Ever since the Congress began delegating regulatory functions to administrative agencies of the Government, there has been disagreement among lawyers as to the fairness of the procedures under which the agencies operate. In 1946 the Administrative Procedures Act was passed in an effort to formalize the day-to-day rulemaking and regulatory procedures of Government agencies. The 1946 act provides that unless the findings of fact upon which administrative orders are based are supported by 'substantial evidence' a Federal court of appeals can reverse the order of the administrative agency. Court decisions have required that an administrative agency must give consideration to the entire record including contradictory evidence when it determines facts,"

The committee—

this is the Senate committee—

has endeavored to prescribe a new statutory criterion requiring that a high standard of fairness be observed by the courts, and the fair evaluation of the record is this new statutory criterion.

It was followed by the Congress in the color additives amendment to the Food, Drug and Cosmetic Act.

It was followed by the Congress in the hazardous substances labeling law that was approved in 1960.

And we believe that it is applicable to this scheme of administrative procedures just as it was in those other three bills. It fits into it. I think that this trend of the Congress will be carried through in all regulatory types of statutes.

Mr. HEIMBURGER. May I ask just one question?

Mr. JONES. Yes.

Mr. HEIMBURGER. It would seem that this "fair evaluation of the record" arrives at about the same point that might be arrived at if these words were "the preponderance of the evidence." What is your distinction between these two?

Mr. ACKERLY. I think, probably, they are fairly close. I think that "preponderance of the evidence" means that the court must weigh the evidence. "A fair evaluation of the record" I do not think would require the court to really weigh the evidence, although in the final analysis they would have to determine wherein the Secretary's findings are supported by a fair evaluation. I think they are pretty close in context.

The reason that we recommended "fair evaluation of the record" is simply because that language appears in the other three statutes, and we picked it up from those as the trend of the scope of the judicial review.

I think "fair evaluation of the record" would require that the Secretary's findings be supported by a preponderance of the evidence.

Mr. HEIMBURGER. Have there been any court decisions, to your knowledge on this particular phrase?

Mr. ACKERLY. No, to my knowledge there has not. Yesterday I asked Mr. Goodrich who was here as counsel for the Food and Drug Administration if he had encountered this phrase in the courts yet, and he said "No."

Mr. HEIMBURGER. Thank you.

Mr. JONES. Are there any other questions on this particular amendment? If not, we will proceed.

(The suggested amendments to H.R. 6828, together with the explanation thereof, follow:)

SUGGESTED AMENDMENTS AND EXPLANATIONS TO H.R. 6828

Amendment No. 1

Page 2, line 18, before the word "cancel" insert the words "suspend or".

This amendment merely completes the descriptive introduction to the procedures to be followed in the event of a denial, suspension or cancellation of a registration. The words "suspend or" which will be added by this amendment were apparently inadvertently omitted.

Amendment No. 2

Page 3, line 7, delete the period after the word "Secretary" and insert in lieu thereof a comma and the following words, "or in the alternative the applicant or the registrant may file objections to such notice and request a public hearing thereon. If a petition is not filed within thirty days requesting reference to an advisory committee or if a request for a public hearing is not filed within the time allowed for such filing, this notice shall become the final action of the Secretary with respect to the application or the registration."

This amendment provides that if the applicant or the registrant does not request further proceedings following a denial or suspension of a registration by the Secretary, the Secretary's action shall become final. This will alleviate the necessity for the Secretary to issue a subsequent order and permit the Secretary's initial action to become final upon the expiration of the time period if the applicant or registrant desires no further proceedings to be held.

Amendment No. 3

This corrects a typographical error. Page 4, line 2, delete "in" and insert in lieu thereof the word "of".

Amendment No. 4

Page 4, lines 10 and 11, delete the words "make a report and recommendation to the Secretary as to the registration of the article." and insert the following, "submit a report and recommendations to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations."

The purpose of this amendment is to require an advisory committee to submit with its report a statement of the reasons or basis underlying its recommendations. This will be helpful both to the Secretary and to the registrant or applicant.

Amendment No. 5

Page 4, line 13, after the word "shall" insert a comma and the words "within ninety days after receipt of the report and recommendations of the advisory committee."

This amendment requires the Secretary to act upon the application or registration within ninety days after the receipt of the report of the advisory committee. The bill does not provide a time within which the Secretary must act and it is felt that some time limitation is desirable.

Amendment No. 6

Page 4, line 16, delete the words "Any person adversely affected thereby" and insert in lieu thereof the words "The applicant for registration, or registrant."

This amendment is for clarification. The phrase "Any person adversely affected thereby" would be in this instance only the applicant or the registrant and substitution of the words "The applicant for registration, or registrant," clarifies this sentence in the bill.

Amendment No. 7

Page 4, line 17, after the word "may" insert the words "within sixty days from the date of the order of the Secretary,".

This amendment places a sixty-day time limit within which a public hearing

may be requested following the order of the Secretary upon which the hearing is to be held. If a hearing is not requested within sixty days, the Secretary's order becomes final.

Amendment No. 8

Page 5, line 9, after the word "shall" insert the words "evaluate the data and reports before him,".

The purpose of this amendment is to make clear that the Secretary is not bound by the recommendations of the advisory committee but should evaluate the entire record before issuing his order following a public hearing, if one is requested.

Amendment No. 9

Page 5, line 20, after the word "until" strike the remainder of that sentence and insert in lieu thereof the following, "a public hearing is held, or where no hearing is requested until the action concerning registration of the product becomes final."

This amendment is to clarify the procedure with respect to the confidentiality of data submitted in support of a registration. This amendment removes the confidentiality of such data when a public hearing is held or when the action of the Secretary becomes final.

Amendment No. 10

Page 7, line 10, delete the words "by substantial evidence when considered on" and insert in lieu thereof the following, "by a fair evaluation of".

This amendment provides that in the event of an appeal to the U.S. Court of Appeals the findings of the Secretary with respect to questions of fact shall be sustained if supported by a fair evaluation of the record as a whole. The bill presently provides that the findings shall be sustained if supported by substantial evidence. The scope of judicial review recommended by this amendment, that is a fair evaluation of the record as a whole, is the scope of review provided in the food additives amendment and color additive amendments to the Federal Food, Drug, and Cosmetic Act and in the Federal Hazardous Substances Labeling Act. This amendment then follows the scope of review provided by the Congress in the three most recent enactments in this field.

Mr. JONES. I have a question on page 3 of your statement, Mr. Brinkley. Down at the bottom of the page you say.

We suggest, therefore, that the committee report on this bill and emphasize that the purpose in allowing the Secretary to require the registration number on the label is to give assurance to growers that the product has been registered by the U.S. Department of Agriculture and, to the extent necessary, has been approved by the Food and Drug Administration for use on the crops listed on the label.

Where, in the bill, does this reference to the Food and Drug Administration appear?

Mr. BRINKLEY. That is not in this particular amendment, I do not believe. But, in the bill itself, and the procedures thereunder, when an applicant makes, or a company makes, an application for registration, they must support this registration—this application, rather—with substantiating data, some of which includes whether or not a residue is left on the crop; and, if a residue is left on the crop, then the Food and Drug Administration has to approve or set a tolerance for it, and they set that tolerance at any of several levels. It can be what they call a "no residue registration," in which it is assured that, with the use of the material as carried out by the recommendations, there will be no residue left on the crops. Another one is what they call a "zero tolerance," in which the Food and Drug Administration actually says that no residue may be left on the crop.

And, thirdly, they can allow a finite tolerance, which might be one part per million, or seven parts per million, or any other amount that they would allow.

And then they have to assure the Department of Agriculture that they are satisfied with this, that they are satisfied that the use as prescribed would be safe.

Mr. JONES. What I was getting at was this: In other words, there is no place in the bill where you make any reference or have any requirement of a Food and Drug Administration report. We had some testimony yesterday from a representative of the Department of Health, Education, and Welfare, the Food and Drug Administration, suggesting certain things, and I suggested that we might be getting into an area of jurisdiction. Of course, I would think that, in your industry, you ought to avoid that. And, so, I can understand why you want to be safe and observe the tenor of the Food and Drug Administration regulations; but, I could not quite reconcile this statement with the bill.

Mr. BRINKLEY. Let me see if Mr. Ackerly can refer to the section of the bill that this would be under.

Mr. ACKERLY. That does not appear directly in the bill. The basis of that statement is this: When a pesticide is sold to a grower for use on a crop, by the interplay of the Miller amendment to the Food, Drug and Cosmetic Act, and the Federal Insecticide, Fungus and Rodenticide Act, the Department of Agriculture will not register these products unless the Food and Drug Administration has approved it on a zero tolerance, or has established a finite tolerance for it. So, the grower can be assured when he sees the number on the label, either that the Department of Agriculture has determined that no residue will remain, or that it has been reviewed by the Food and Drug Administration and that the directions for use are such that, if they are followed, any residue that does remain at the time of harvest, will be within the scope of the tolerance established by the Food and Drug Administration. So that the farmer or grower knows that, if he follows the directions, his product, his crop, is going to be free to move in interstate commerce.

It does not appear in the Insecticide Act, nor in the Miller amendment. There is the interchange, you see. The Department of Agriculture registers these products. The Food and Drug determines the products to be used on crops where residue might remain, how much of that residue is saved. The Department of Agriculture will not register unless the Food and Drug Administration, where there is a residue, has established either a zero tolerance or a finite tolerance. Therefore, the grower is assured by the appearance of that number on the label that, if he follows directions, he will probably be all right, unless of some unusual weather conditions, or something like that. It is an interplay between the two statutes and the two agencies.

Mr. JONES. Are there any other questions?

Mr. HARVEY of Indiana. I am sorry that Mr. Rosenthal is not present at the moment. A great deal of comment has been made with regard to death due to pesticides. As I envision the problem, a far greater aspect of it has to do with allergies. There is no way in the world to determine how many people are going to have an allergy—which may be serious—to the toxic effect of any given chemical. I am not minimizing the importance of determining the lethal possibilities of these pesticides, and other chemicals as well, but I really think that

sometimes we overlook the importance of the possible allergy impact.

Mr. BRINKLEY. Thank you, Mr. Harvey. We are, as I said, giving a great deal of attention to that.

Mr. JONES. Mr. Matsunaga.

Mr. MATSUNAGA. On the question raised by the chairman, do I understand you correctly to say, Mr. Brinkley, that under existing law, the registration number will not be given even if this bill is not adopted, until the Food and Drug Administration has approved as to tolerance?

Mr. ACKERLY. That is true with respect to any pesticide that is intended for use on a growing crop.

Mr. MATSUNAGA. Is it under existing law?

Mr. ACKERLY. Under existing law, any pesticide that is to be used on a growing crop, if the directions are such that a residue might remain at harvest, then we must file a petition for a tolerance with the Food and Drug Administration. The Secretary of Agriculture certifies these products to the Food and Drug Administration under a certification of usefulness. Then the Food and Drug Administration, through its own procedures under the Miller amendment to the Food, Drug and Cosmetic Act, establishes a tolerance. When that tolerance is issued, then the product goes back to the Department of Agriculture and is registered.

Mr. MATSUNAGA. In your opinion, there is no need for additional amendments to the bill, then?

Mr. ACKERLY. You mean as suggested by the Food and Drug Administration yesterday?

Mr. MATSUNAGA. Right.

Mr. ACKERLY. I do not really think so. I do think that, as the chairman suggested, this may be a matter of just the two agencies working out intramural procedures more carefully, although I think they are working them out pretty well now.

Mr. Kirk commented generally, but he did not submit any specific sections of the law that he thought should be amended.

Mr. MATSUNAGA. If there is that requirement under existing law—that is, assuming that there is—you would approve of a law specifically requiring Food and Drug Administration approval before the Department of Agriculture could issue the registration number? You do approve of such a requirement?

Mr. BRINKLEY. Mr. Chairman, that is presently provided for.

Mr. MATSUNAGA. That is what I am trying to determine. We have had some conflicting testimony here.

Mr. JONES. It does not appear in this law, but you say that it does appear in some other portions of the statutes?

Mr. BRINKLEY. Yes, sir. And I would like to suggest to you, if I might be so bold, that you ask the Department of Agriculture to comment on this particular procedure for the committee's information, and then we will be right.

Mr. JONES. We shall do that. We will have some of them here when we get into executive session on these bills to determine that there is adequate protection.

Mr. MATSUNAGA. One further question, Mr. Chairman. You suggest, Mr. Brinkley, in your prepared statement—that perhaps the States would not find it necessary to adopt the requirement for a State

registration number. This would be for those that do not go into interstate commerce?

Mr. BRINKLEY. They are controlled by State laws, sir. Unless the commodity is in interstate commerce, then it does not come under the requirement of this law.

Mr. MATSUNAGA. Your suggestion here is that you feel that the various States will not have to go into this procedure of giving registration numbers. What about those items which do not enter into interstate commerce—would the State need to have some form of registration number for the same type of protection given to the others which do enter into interstate commerce?

Mr. BRINKLEY. Yes; I think that would be perfectly all right.

Mr. MATSUNAGA. Thank you.

Mr. BRINKLEY. I would not like for us to have to put every State registration number on all of our labels, because it would be quite burdensome, and I think it would actually defeat the labeling idea we have now. It would so clutter up the label with written material, that you would have to make the print so small that to get the remainder of the instructions on some of these small packages, that it would just be most undesirable so that where a product is not in interstate commerce, where it is not federally registered, that I think that it would be entirely in order for the State to require that statement; yes, sir.

Mr. HAGEN of California. In connection with what you are saying, would not this seem to be one of those instances where the Federal statute would preempt the field?

Mr. BRINKLEY. I am not at all sure about that. I just do not know. I am uninformed.

Mr. HAGEN of California. Do you not think so?

Mr. ACKERLY. I would hope so. Not this specific act—

Mr. HAGEN of California. Has this been tested?

Mr. ACKERLY. I repeat, not this specific act; but in the National Warehouse Act it has been tested. The licensing program of the Department of Agriculture has been tested in the Supreme Court, and they have held that Congress did preempt the field and certain fields in regard to the registration of grain warehouses.

Mr. HAGEN of California. Yet there might be some that might test it under the labeling requirement.

Mr. ACKERLY. I assume that we would, and I would hope that the committee might express itself to that effect in the report.

Mr. JONES. Mr. Beermann.

Mr. BEERMANN. Mr. Brinkley, in your position as commissioner of agriculture for the Commonwealth of Virginia, did you find many areas where there was difficulty between the Federal and State Governments in such situations as presented here?

Mr. BRINKLEY. We work very closely with them and we encountered no difficulty.

Mr. BEERMANN. You do not see any problem here then?

Mr. BRINKLEY. No.

Mr. BEERMANN. In the overall picture, then this type of regulation or registration will be helpful to the States, you feel?

Mr. BRINKLEY. Yes, sir.

Mr. BEERMANN. That is all.

Mr. JONES. If there are no further questions, we thank you, Mr. Brinkley, for your testimony, and also for the suggestions you have made for amendments to the act. They will be given full consideration by the committee.

Mr. BRINKLEY. Thank you very much.

Mr. JONES. We will next hear from Mr. John A. Rodda of the Chemical Specialties Manufacturers Association.

STATEMENT OF JOHN A. RODDA, ASSISTANT TO THE PRESIDENT, F.M.C. CORP., APPEARING ON BEHALF OF THE CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION; ACCOMPANIED BY ROBERT L. ACKERLY, CUMMINGS & SELLERS, WASHINGTON, D.C.

Mr. RODDA. Mr. Chairman and members, I too have Mr. Robert L. Ackerly with me this morning. His firm is Cummings & Sellers who are similarly counsel for Chemical Specialties Manufacturers Association.

My name is John A. Rodda. I am assistant to the president of F.M.C. Corp. I appear this morning as a representative of the Chemical Specialties Manufacturers Association, a nonprofit trade association which was incorporated in 1914. The 500 members of this association represent a major segment of the producers and distributors of chemical specialty products for general household use. The association is divided into six divisions, one of which is the insecticide division. H.R. 6828 and the two companion bills, H.R. 6913 and H.R. 7336, propose to amend the Federal Insecticide, Fungicide, and Rodenticide Act under which the products of the members of our association are registered. We, thus, have a direct interest in this bill.

The position of the pesticide industry generally on this bill has been stated by Mr. Parke C. Brinkley. Mr. Brinkley has explained particularly the impact of the bill on the agricultural chemical industry. This association joins with the National Agricultural Chemicals Association in supporting H.R. 6828 and also endorsing the amendments which Mr. Brinkley has submitted to the committee. The purpose of my statement is to explain briefly the possible impact of this bill on the small package or household and garden segment of the industry.

As you know, most insecticides for use around the household and in the garden are sold in small packages. The available label space on these containers is limited. At the present time to comply with the Federal Insecticide, Fungicide, and Rodenticide Act, the label must contain detailed directions for use, a warning or caution statement of any hazards in the handling and use of the product, an ingredient statement in the form required by the Department of Agriculture, a statement of the net contents and the name and address of the manufacturer as well as the trade name of the product. We understand that the Department of Agriculture is presently engaged in redrafting some of its regulations which will in part require a reference to the directions and precautions to appear on the front panel. Several States in the enforcement of their weights and measures laws now require the statement of net contents to appear on the front of the container. We are, therefore, somewhat concerned with the provision of this bill

which would authorize the Secretary of Agriculture to require the registration number of the product to appear on the label.

The purpose of this requirement, as we understand it, is primarily to assure growers of agricultural crops that a pesticide has been registered with the Department of Agriculture and that application of the pesticide in accordance with the label directions will result either in no residue of the pesticide at the time of harvest or if a residue remains that it will be present in an amount within the official tolerances established by the Food and Drug Administration for such a residue. As the bill is drafted, we interpret it to mean that the Secretary of Agriculture would not be required to insist upon the registration number on the label of every pesticide. It is possible that the Secretary will determine that since the primary purpose of this section of the bill would not have application to household insecticides, the registration number need not appear on these small containers. If the Secretary determines that the registration number should appear on these products, we would anticipate that the requirement would be limited to a number preceded by some brief designation, such as "USDA Reg. No." Space can be found on most labels for a brief statement of this type; however, we are concerned as to the attitude that the 47 States, who also register these products, will take with respect to requiring the State registration number on the label. It would be physically impossible to list a whole series of registration numbers on these small containers.

We request, therefore, that the committee report on this bill point out the seriousness of this problem and the intent of the committee that products may move freely in interstate commerce with only the Federal registration number on the label.

With respect to the remaining sections of this bill, which would delete registration under protest and substitute an administrative hearing procedure, our position is that since the bill affords the industry an opportunity of administrative and judicial review of decisions on registration we support this part of the bill also. Registration under protest has always been viewed by this association as a method of protection against arbitrary action by an administrative official, and a method of obtaining judicial review. We have always understood that a product registered under protest is subject to seizure at any time without notice if the Department of Agriculture decides that the product does not comply with the act. Registration under protest has been used sparingly, which is a tribute to the way in which the industry has cooperated with the U.S. Department of Agriculture in the enforcement of this act.

Substituting an advisory committee procedure along with opportunity for public hearing and judicial review of the decisions of the Secretary under this law is undoubtedly a more orderly and more satisfactory procedure than registration under protest. These procedures will be time consuming and cumbersome, but we recognize that this is necessary where evaluation of research data is required and expert judgments made based upon the results of experimental data. The final decision, of course, rests with the Secretary following exhaustion of the advisory committee and public hearing procedures. The Secretary will thus not be bound by the report and recommendations of the advisory committee, but his judgment will be based upon

the entire administrative record. If an appeal is taken to the court, the court should also base its review on a fair evaluation of the administrative record certified to the court by the Secretary. We believe that the bill with the amendments submitted by Mr. Brinkley satisfies these principles.

Once again we do see the possibility of a serious problem at the State level if this procedure should be adopted by the States. A great majority of the products of this association move in interstate commerce and uniformity of requirements between the Federal and State Governments is essential. We are hopeful, therefore, that the State governments will accord great weight to the action of the Secretary of Agriculture under this amendment and accept for registration at the State level products which are approved by the Secretary for registration by the Federal Government.

We appreciate the opportunity to appear before your committee this morning. We endorse the principles and objectives of this bill. No law is static and an important regulatory statute such as the Federal Insecticide, Fungicide, and Rodenticide Act should be subject to constant review and should be amended when necessary to meet changing conditions. We believe that these amendments will improve the enforcement of this law and strengthen the bill, which at the same time preserving and protecting the basic rights of the regulated industry. The committee can be assured that this industry will continue to cooperate fully with the Congress and with the Department of Agriculture in the enforcement of this law and in the implementation of these amendments.

Mr. JONES. Thank you. Mr. Rodda, I think that your apprehension about the States is something on which the Congress cannot do anything; but I would think that most States would, at least, give recognition to the fact that the law has been improved if this bill is adopted, and that the one Federal registration number would be sufficient. However, I think, as you suggest, that we could include or make some reference to that in our report. We want to thank you for your appearance here this morning on behalf of your industry.

Are there any questions? I am not trying to cut anybody off, but we have only 15 minutes left and we have two more witnesses to hear. So, therefore, would you please all make it as brief as you can in your questioning.

Mr. ROSENTHAL. Mr. Rodda, do you have any comments on the report of the President's Science Advisory Committee concerning the 1,000 deaths that resulted from pesticides?

Mr. RODDA. I must reply in the same manner that Mr. Brinkley did, because I have no basis for commenting. We are not familiar with the source of the information and have not had access to the data upon which it was constructed.

Mr. ROSENTHAL. Do any of the members of your organization report to you about deaths and the like?

Mr. RODDA. We have no machinery, no facilities for that.

Mr. ROSENTHAL. That is not a subject reported upon within your industry?

Mr. RODDA. Not by the association, no, sir.

Mr. ROSENTHAL. No further questions.

Mr. JONES. Mr. Beermann.

Mr. BEERMANN. No questions.

Mr. JONES. Thank you very much, Mr. Rodda.

We will next hear from Mr. Richard T. O'Connell, secretary, National Council of Farmer Cooperatives.

STATEMENT OF RICHARD T. O'CONNELL, SECRETARY, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. O'CONNELL. Mr. Chairman and members of the committee, I will not read my statement, because the hour grows late but will summarize it.

Mr. JONES. It will be made a part of the record in full. If you will, give us just a gist of it, which will be very helpful, because we will have a quorum call shortly after 12 o'clock, and we would like to complete this session this morning.

Mr. O'CONNELL. Our general purpose for being here today is to let the committee know that a farm group is supporting this measure. We believe it will be beneficial to the farmers since the adverse impact of any difficulties that arise from the use of pesticides generally falls on the shoulders of farmers as well as being a financial burden.

We believe the elimination of the "under protest" sales will tighten up the laws in this area and possibly prevent some of, shall we say, situations that occurred in the cranberry and poultry industries several years ago. We make the comment about cranberries and poultry only as to an improvement of procedural matters. We do not mean to imply that the products involved in those two instances were being sold under protest.

In general, we support this legislation.

We have submitted three amendments, two of which I see, after hearing Mr. Brinkley testify, are identical to his. The third amendment is merely one covering timeliness on the part of the Secretary in submitting reports—just purely a procedural amendment and it does not change the intent of this bill.

(The prepared statement of Richard T. O'Connell follows:)

STATEMENT OF NATIONAL COUNCIL OF FARMER COOPERATIVES

I am Richard T. O'Connell, secretary, National Council of Farmer Cooperatives. The National Council is a federation of farmer cooperatives with several members manufacturing agricultural chemicals and a substantial number of member organizations distributing chemicals to nearly 3 million farmers.

We appreciate this opportunity to express our views on H.R. 6828 and other bills pending.

The National Council supports the objectives of H.R. 6828 for two principal reasons: (1) the statutory inclusion of an advisory committee to assist the Secretary in evaluating data, and the selection of its members from the National Academy of Sciences, will give the broad and objective analysis of economic poisons which we believe essential for their continued effectiveness in agriculture; and (2) the eliminating of the sale of economic poisons "under protest" will substantially remove the potentially adverse public relations position the farmer is placed when difficulties arise.

However, there are several amendments we wish to recommend to strengthen the measure.

We will briefly discuss each position.

ADVISORY COMMITTEES STIMULATE A BROAD-SCALE ANALYSIS

It is our belief when adverse situations arise from the use of economic poisons in the production and marketing phases of agriculture, the farmer generally bears the brunt of the unfavorable publicity and frequently the financial damage as well. We are certain the committee recalls the situations in the cranberry and poultry industries several years ago. The incidents caused a temporary decline in the per capita consumption of these two products and posed a severe financial reversal for farmers until assistance was received from the Government.

We believe the twin tragedies that occurred in cranberries and poultry could have been eliminated or the impact sharply reduced if an advisory committee such as suggested in this measure had been in effect prior to the registration of the chemicals involved and could have been available during the crisis.

The fundamental advantage of employing an advisory committee of competent members of the scientific community is the opportunity to thoroughly analyze, from all aspects and viewpoints, research and other data before a decision is reached. The advisory committee can weigh and judge the conflicts that seem to exist when two or more scientists study the same problem. The committee can also act as a clearinghouse for research work as well as an important adjunct to the Secretary in his decisionmaking processes. We support this procedure.

SALES "UNDER PROTEST" SHOULD BE ELIMINATED

Much of the publicity furor in recent months has, as this committee is well aware, been concentrated on the sale of economic poisons "under protest." We believe the publicity has far overshadowed the beneficial and effective uses of agricultural chemicals. It can be easily considered as a thorn in the side of agriculture, and a strong weapon in the hands of those who wish to see the reduction or elimination of the use of chemicals in agricultural production and marketing.

Therefore, it is imperative that agriculture remove the stigma of sales "under protest" so that the public can judge the effectiveness of those products approved by the USDA as safe.

We believe the removal of sales "under protest" will cause little if any economic hardship on agriculture or the manufacturers of these products. It is our understanding that approximately one-half dozen products are currently being sold "under protest" out of about 50,000 products approved for use by the USDA.

AMENDMENTS TO STRENGTHEN THE MEASURE

The amendments we recommend are largely to clarify and improve the procedures contained in H.R. 6828 and do not alter the objectives of the proposed legislation.

On page 3, line 7, we recommend the deletion of the period after the word "Secretary" and insert in lieu thereof a comma and the following words, "or in the alternative the applicant or the registrant may file objections to such notice and request a public hearing thereon. If a petition is not filed within thirty days requesting reference to an advisory committee or if a request for a public hearing is not filed with the time allowed for such filing, this notice shall become the final action of the Secretary with respect to the application or the registration."

The recommended amendment is an attempt to offer alternatives to the procedures the Secretary or the applicant may follow. We believe it is important that fair and equitable procedures be permitted for both the Secretary and the applicant in stating their cases, either privately or publicly. We also favor the inclusion of time limits, such as a specified number of days to complete actions. Time required to make a decision becomes a matter of judgment, but in most occasions a time limit stimulates and spurs the parties in concrete action. The use of the term "final action" by inaction is also good. This will give notice to both parties that after a stated amount of time has elapsed, the prior decision is the one that stands. This eliminates the possible confusion from two or more statements being rendered on the same subject.

Our second recommended amendment is as follows:

On page 4, line 13, after the word "shall" insert a comma and the words "within ninety days after receipt of the report and recommendations of the advisory committee."

Our third amendment is on page 5, line 8. Delete the words "as soon as practicable" and insert in lieu thereof the words, "within ninety days."

Our reasons for the importance of time in expediting the decisions in these last two amendments are the same as we have stated earlier.

Our fourth and final amendment is on page 7, line 10. Delete the words "by substantial evidence when considered on" and insert in lieu thereof the following "by fair evaluation of."

This amendment, in our judgment, establishes continuity where an advisory committee is employed in assisting the Secretary in evaluating the data supplied. It further reduces hasty judgment and narrow interpretation of research data which we believe has been a possibility in the past.

SUMMARY

The National Council of Farmer Cooperatives favors the passage of H.R. 6828 and preferably with our recommended amendments. We urge this committee to favorably report H.R. 6828 and actively support its passage in the House.

We appreciate this opportunity to express our views.

Mr. JONES. As to Mr. Brinkley's amendments, yours refers to what portion of the bill?

Mr. O'CONNELL. Our third amendment is, as to page 5, line 8, delete the words "as shown as practical" and insert in lieu thereof the words "within ninety days".

We believe the time element is important in these decisions, not to have them drag out.

Mr. JONES. We all want to see that they expedite these matters as quickly as possible.

Are there any other questions? If not, we want to thank you, Mr. O'Connell. As stated, your complete statement will be made a part of the official record.

Mr. O'CONNELL. Thank you.

Mr. JONES. Our next witness is Mr. John C. Datt, assistant to the director of the Washington office of the American Farm Bureau Federation. We shall be glad to hear from you now.

STATEMENT OF JOHN C. DATT, ASSISTANT TO THE DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION

Mr. DATT. Mr. Chairman and members, my name is John C. Datt, assistant to the director of the Washington office of the American Farm Bureau Federation.

I believe that you have a copy of my prepared statement before you. I would like to submit it for the record.

Mr. JONES. It will be made a part of the record at this point.
(The prepared statement of John C. Datt follows:)

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

We appreciate this opportunity to present the views of the American Farm Bureau Federation concerning H.R. 6828, H.R. 6913, and H.R. 7336.

This legislation, as we understand it, would amend the Federal Insecticide, Fungicide and Rodenticide Act to do two things:

(1) Require that when the Secretary of Agriculture registers one of the economic poisons he would provide for the label to contain the registration number assigned to that particular product.

(2) Eliminate the provisions whereby economic poisons can be registered by their manufacturers under protest.

Farm Bureau is a free, independent voluntary organization of farm and ranch families. Currently we have over 1,600,000 members in some 2,700 counties and 49 States, and Puerto Rico. Farm Bureau members use substantial quantities of agricultural chemicals and drugs. Therefore, we are quite interested in any legislation that affects their use.

Agricultural chemicals and drugs have become very essential to the economic

production of food. Farmers are vitally interested in protecting the public health and welfare of our consumers at all times. We have a responsibility to see that agricultural chemicals and drugs are properly used. We have conducted educational programs among our members in order to insure proper use.

Farm Bureau in the past has supported legislation to provide for the proper labeling and use of agricultural chemicals and drugs for the protection of public health and welfare.

The proposed legislation is, in our opinion, designed to further provide for proper use of agricultural chemicals and drugs as well as to provide for increased protection to consumers.

The first section of the proposed legislation dealing with the labeling of economic poisons with registration numbers would be of assistance to farmers and ranchers. If these economic poisons contained registration numbers, a producer would then know that the product had been registered and cleared by the U.S. Department of Agriculture for proper use. He would then know that, if he used the product according to directions provided him by the manufacturer, the final food product would be safe for consumers.

The second provision of the bill deals with the elimination of registration under protest. Currently, a manufacturer of an economic poison can present his product to the Secretary of Agriculture for registration. If the product meets the requirements set forth by the law, and carried out by the Secretary, he will register it for proper use. However, in the event that the product fails to meet the procedures established by the Secretary, he can refuse to register the product. Under these circumstances, the manufacturer does have the privilege to proceed and market the product under the so-called registration under protest provision.

While it is our understanding that very few of the products that have been registered under protest would be directly used by agricultural producers, we are concerned about this provision and support legislation to eliminate it.

From the producer's standpoint, it is important that he know that an agricultural chemical or drug has been properly cleared by the Secretary of Agriculture. Even though a manufacturer of a product may be responsible, it is the farmer who takes much of the blame when an economic poison causes injury or harm. A farmer might use one of the products that had been registered under protest and not fully realize this, and therefore subject himself to serious problems.

Because of the discussion that has taken place in recent weeks concerning the use of agricultural chemicals and drugs, we believe it is important that all steps be taken to make it possible for farmers to use them safely. The use of agricultural chemicals and drugs has been largely responsible for providing consumers with low-cost, high-quality food. The use of these products is essential if we are to continue to maintain this high standard in our food production.

Farm Bureau for a number of years has, through all phases of the organization, conducted an aggressive educational program to be certain that individual farmers adhere strictly to the recommendations for the proper use of agricultural chemicals and drugs. We shall continue this educational program, because we recognize that we have a responsibility as farmers and ranchers to see that these products are properly used.

The Farm Bureau supports the passage of H.R. 6828, H.R. 6913, and H.R. 7336, and hopes that the committee will give them favorable early consideration.

We appreciate the opportunity to present our views on this legislation.

Mr. DATT. Our farm members use substantial quantities of agricultural drugs and commodities, and, therefore, we have quite an interest in any legislation that affects their use. Particularly in recent years, agricultural chemicals and drugs have become very essential in the economic production of food. And we, as farmers, have a vital concern in providing and protecting public health and welfare of the consumers. And so we have an interest in this legislation.

The Farm Bureau supports this legislation because we believe that it will assist in improving protection to the consumers and at the same time will be of assistance to the farmers. It will enable them to know when the products have been registered, to know that if an agricultural chemical is made available, that it, in fact, has been registered and approved by the Department of Agriculture.

All throughout the organization, we conduct educational programs, because we are confident that if the directions that are provided on the various agricultural drugs and chemicals are followed, that we can cut down the number of deaths and other problems that come up in this particular area.

Mr. JONES. I think, of course, that all of the farm organizations can be helpful in an educational program. I know that you have been in the past in calling attention to hazards involved. We appreciate the necessity for this.

Are there any questions by members of the committee?

Mr. BEERMANN. There is one question that I would like to ask. If chemicals are used in such large quantities as to be entirely bulk operation, would the responsibility be on the part of the handler or the applicator to follow the instructions?

Mr. DATT. Well, I think that if I understand your question correctly, you are speaking in terms of where you have, say, a spray application by air or something like that, where a substantial quantity is used at one time.

Mr. BEERMANN. Yes. In containers such as tank cars, large containers, larger than just the normal size containers, would they have labels on them? Just how would you handle that?

Mr. DATT. I will ask Mr. Noone to answer that.

STATEMENT OF JOSEPH A. NOONE, TECHNICAL DIRECTOR, NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION, WASHINGTON, D.C.

Mr. NOONE. My name is Joseph A. Noone, and I am with the National Agricultural Chemicals Association.

The Federal Insecticide, Fungicide, and Rodenticide Act specifically requires that all containers bear such directions for use as may be necessary for the protection of the public and proper use of the material.

There is a proviso that containers such as tank cars need not have instructions upon them, inasmuch as it is assumed that the purchaser of such large quantities is fully familiar with the product and its use.

If, however, it is a new chemical with which he would not have had prior experience, then he must be given adequate instructions.

Mr. JONES. Just as a matter of procedure, it would be presumed that any manufacturer, distributor of such products, would be assured that the purchaser would be aware of the properties of that substance and the facts that would be necessary for its safe use.

Mr. NOONE. Apart from the legal requirement of the act, yes.

Mr. JONES. Are there any further questions? If not, we want to thank you very much for your appearance here, as well as all of the witnesses. The committee will have an executive session at an early date, and it is possible that we will call upon some of you and from the Department, particularly, before we take any official action on this legislation.

The subcommittee will stand adjourned subject to the call of the Chair.

(Whereupon, the hearing adjourned at 11:55 a.m., subject to the call of the Chair.)

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LEGISLATIVE HISTORY

Public Law 88-305
S. 1605

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DIGEST OF PUBLIC LAW 88-305

AMENDMENT TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.

Permits the labels of economic poisons registered under the Act to bear the registration numbers, and authorizes the Secretary of Agriculture to require by regulation that registration numbers appear on such labels. Deletes the provisions for registration of economic poisons under protest and prescribes the procedures to be followed in refusing or canceling registrations, or requiring modification of claims or labeling of registered economic poisons. Makes provision for referral of the question of the eligibility of an economic poison for registration to an advisory committee; for public hearing, if requested, with respect to the Secretary's order issued after consideration of the views of the committee and other data; and for judicial review of the order after such hearing.

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of a people who have grown from a small colony of English settlers to a great nation of free men and women. The story begins in 1492 when Christopher Columbus discovered the New World. The first English settlers came to the United States in 1607, and the first American Revolution was fought in 1776. The United States has since grown to become one of the most powerful nations in the world. The story of the United States is a story of a people who have fought for freedom and justice, and who have built a great nation.

INDEX AND SUMMARY OF S. 1605

May	27, 1963	Sen. Ribicoff introduced and discussed S. 1605 which was referred to Senate Agriculture and Forestry Committee. Print of bill and remarks of author.
June	5, 1963	Rep. Rosenthal introduced H. R. 6828 which was referred to the House Agriculture Committee. Print of bill as introduced.
Oct.	16, 1963	Senate committee voted to report S. 1605.
Oct.	21, 1963	Senate committee reported S. 1605 with amendment. S. Report No. 573. Print of bill and report.
Oct.	22, 1963	Senate passed S. 1605 as reported.
Oct.	23, 1963	S. 1605 was referred to the House Agriculture Committee. Print of bill as referred.
Nov.	14, 1963	House subcommittee voted to report H. R. 6828.
Jan.	23, 1964	House committee voted to report H. R. 6828, a clean bill to be introduced. Rep. Rosenthal introduced H. R. 9739 which was referred to the House Agriculture Committee. Print of bill as introduced.
Jan.	28, 1964	House committee voted to report H. R. 9739.
Feb.	3, 1964	House committee reported H. R. 9739 without amendment. H. Report No. 1125. Print of bill and report.
Feb.	17, 1964	House passed S. 1605 with amendment, in lieu of H. R. 9739. H. R. 9739 laid on table due to passage of S. 1605.
Apr.	8, 1964	Senate concurred in House amendment to S. 1605 with an amendment.
Apr.	29, 1964	House concurred in Senate amendment to S. 1605.
May	12, 1964	Approved: Public Law 88-305. President's statement when approving bill.

Hearings: S. hearing on S. 1605 and H. hearing on H. R. 6828.

tional reserve that should be devoted to productive use now and maintained for future generations." The President took cognizance of the need for improved management of the public lands and directed the Secretary of the Interior in the above message to "develop a program of balanced usage designed to reconcile the conflicting uses—grazing, forestry, recreation, wildlife, urban development and minerals."

Congress took an important step in the direction of providing for the management and conservation of the public lands with the enactment in 1934 of the Taylor Grazing Act (43 U.S.C. sec. 315, et seq.). This law, in part, authorized the Secretary of the Interior, "in order to promote the highest use of the public lands pending its final disposal" to classify the public lands for various types of disposition and to establish and manage grazing districts in those areas where the lands are chiefly valuable for grazing and raising forage crops.

Three years later, in the historic O. & C. Act (43 U.S.C. 1181(a)) Congress directed that the re-vested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road grant lands under the jurisdiction of the Secretary of the Interior be managed "for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal (sic) of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities."

When, in 1955, legislation was enacted authorizing the disposal of materials on public lands of the United States (30 U.S.C. 601), the Department, in conformity with the principles enunciated by Congress in the landmark O. & C. Act, adopted the goal of disposing of timber "in such a manner and in conformance with sound timber management principles as to obtain maximum permanent benefits and in addition, dispose of forest products under the principles of sustained yield management" 43 CFR 259.4(a).

Thus, in fiscal year 1962 under the provisions of these various management and sustained yield acts, almost 11 million head of sheep, horses, and cattle grazed on the lands administered by the Secretary through the Bureau of Land Management, and 1,165 million board feet of timber, of a value of over \$30 million, was harvested therefrom. These same lands supported well over 2 million big game animals, and in addition, pursuant to leases issued under the Mineral Leasing Act (30 U.S.C. 181, et seq.) yielded revenues of slightly over \$100 million.

It is now timely and highly desirable to have statutory recognition of multiple-use principles with respect to the lands being administered by the Secretary of the Interior through the Bureau of Land Management.

The enactment of the proposed bill would not preclude the disposition of any lands subject to classification and disposition under the Taylor Grazing Act, as amended, 43 U.S.C. 315f. Similarly, lands would continue to be disposed of under the Small Tract Act, as amended, 43 U.S.C. 682a, the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869, and under such other public land laws as may require or render desirable the disposition of lands.

The proposed bill explicitly provides that it is not to be constructed as a repeal, in whole or in part, of any existing law, including, without limitation, the U.S. mining laws and mineral leasing laws. The bill is not intended to, and would not, prohibit the reserving of lands for specific purposes.

The Bureau of the Budget has advised that there is no objection to the presentation

of this proposed draft bill from the standpoint of the administration's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

Mr. BIBLE. In order to assist in achieving an orderly flow of this legislation, the subcommittee will shortly publish a committee print which will contain the text of these bills and pertinent statistics which will be useful to the various groups considering the legislation.

At this time I want to assure all who may be interested that the subcommittee intends to proceed with deliberate speed and that it will take into account, as best it can, all the recommendations which may be made to it. The public land laws of the United States have been in effect for many, many years and there is a definite need to modernize them. The subcommittee will want, however, to proceed with caution so that any new legislation which is enacted will include all the features necessary for sound public land administration.

INCREASE IN CAPITAL STOCK OF INTERNATIONAL BANK FOR RE- CONSTRUCTION AND DEVELOP- MENT

Mr. FULBRIGHT. Mr. President, by request, I introduce, for appropriate reference, a bill to amend the Bretton Woods Agreements Act to authorize the U.S. Governor of the International Bank for Reconstruction and Development to vote for an increase in the Bank's authorized capital stock.

The proposed legislation has been requested by the Secretary of the Treasury, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill may be printed in the RECORD at this point together with the letter from the Secretary of the Treasury dated May 13, 1963, in regard to it.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill and letter will be printed in the RECORD.

The bill (S. 1603) to amend the Bretton Woods Agreements Act to authorize the U.S. Governor of the International Bank for Reconstruction and Development to vote for an increase in the Bank's authorized capital stock, introduced by Mr. FULBRIGHT, by request, was received, read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Bretton Woods Agreements Act, as amended (22 U.S.C. 286-286K-1), is amended by add-

ing at the end thereof the following new section:

"SEC. 19. The United States Governor of the Bank is authorized to vote for an increase of \$1,000,000,000 in the authorized capital stock of the Bank under article II, section 2, of the articles of agreement of the Bank, as recommended in the report, dated November 6, 1962, to the Board of Governors of the Bank by the Bank's Executive Directors."

The letter presented by Mr. FULBRIGHT is as follows.

THE SECRETARY OF THE TREASURY,
Washington, May 13, 1963.

The Honorable LYNDON B. JOHNSON,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft of a proposed bill, "To amend the Bretton Woods Agreements Act to authorize the U.S. Governor of the International Bank for Reconstruction and Development to vote for an increase in the Bank's authorized capital stock," together with a Special Report of the National Advisory Council on International Monetary and Financial Problems on the subject.

The draft bill is technical in nature. It would authorize the U.S. Governor of the Bank to vote for an increase of \$1 billion in the authorized capital stock of the Bank as provided for in a draft resolution now pending before the Board of Governors. The United States will not subscribe to any of the new shares, hence the approval of the draft legislation would not contemplate or require the appropriation or expenditure now or in the future of any funds by the United States. However, section 5 of the Bretton Woods Agreements Act (59 Stat. 514, 22 U.S.C. 286C) requires congressional authorization for the U.S. Governor to agree to an increase in the capital stock of the Bank whether or not the United States actually subscribes to any part of the increase.

The last legislative action in regard to the capital of the Bank took place in 1959, when the Congress amended the Bretton Woods Agreements Act to authorize the U.S. Governor to the Bank to vote for a 100-percent increase in authorized capital, raising the Bank's total authorized capital from \$10 billion to \$20 billion, and for a further \$1 billion special increase in authorized capital to meet anticipated subscription needs (Public Law 86-48, approved June 17, 1959, 73 Stat. 80). Upon the increase in the Bank's capital, members increased their subscriptions by not less than 100 percent generally, and by larger percentages in the case of certain members. On its part, the United States, under authority of the same 1959 legislation amending the Bretton Woods Agreements Act, subscribed to an increase of \$3,175 million in the callable portion of its subscription, bringing the total U.S. subscription to \$6,350 million.

As of March 15, 1963, \$20,710 million of the authorized capital had been subscribed by member countries, leaving an unsubscribed balance of \$290 million. However, expected increases in capital subscriptions currently amount to \$66 million. In addition, pending membership applications from 18 countries will involve capital subscriptions of over \$300 million. Thus, subscription requirements already in view substantially exceed the balance of available authorized capital.

To meet this situation, the Board of Governors, at the annual meeting of the Bank in September 1962, adopted a resolution directing the executive directors to consider the question of a \$1 billion increase in the Bank's authorized capital and to submit a proposal to the Governors for action. The executive directors, in a report of November 9, 1962, concluded that an increase in capital

stock is desirable to insure that the Bank has adequate capital stock for additional new members and to provide for special increases in members' capital subscriptions. Attached to the report was a draft resolution for the approval of the Board of Governors which authorizes an increase of \$1 billion in authorized capital stock. The draft resolution also provides that in the absence of notice to the contrary by December 31, 1963, members waive their rights to subscribe to a proportionate share of the increase as provided in article II, section 3(c) of the Bank's articles of agreement. This provision was inserted in order to formalize the expectation that present members will not avail themselves of their right to subscribe to the new capital stock. The United States at present has approximately 28 percent of total votes in the Bank. Even with the subscription of newly authorized capital by others, the United States will continue to have a sufficiently large proportion of the votes to assure adequate representation of its interests.

Since its foundation the United States has actively participated in the work of the Bank. We have strongly supported its highly successful efforts in promoting economic development in less developed areas. The passage of the draft legislation would assure the continued smooth functioning and expansion of the Bank.

It would be appreciated if you would lay the proposed bill before the Senate. A similar proposal has been transmitted to the Speaker of the House of Representatives.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress and that its enactment would be in accord with the program of the President.

Sincerely yours,

DOUGLAS DILLON.

PREMARKETING CLEARANCE OF INSECTICIDES

Mr. RIBICOFF. Mr. President, as the Senate knows, the Subcommittee on Reorganization and International Organizations has started its study of inter-agency coordination in environmental hazards. Our initial hearings are being devoted to the problems of chemical poisons, especially pesticides, and we have already found that there are a number of problems in this field that warrant careful study.

I am pleased to note also that the Commerce Committee, under the chairmanship of the distinguished senior Senator from Washington, has announced its intention to look into those aspects of this field that come within its jurisdiction. This is a most significant development, and I am hopeful that before long other committees of the Congress will find that there are parts of this problem which merit their serious attention as well.

The focus of our inquiry is upon the problem of coordination of policy and programs within the Federal Government. Just last week we uncovered an important example where lack of coordination has perpetuated a serious gap in Federal law that should have been closed some time ago.

Under present law a manufacturer who wants to market a pesticide applies to the Department of Agriculture for registration. The Department reviews the application to determine whether the

product is safe and whether the labeling is proper. If the Department disapproves the product, present law permits the manufacturer to market the product under a procedure called protest registration.

This means that the Department of Agriculture can determine that a product is too hazardous to be allowed on the market, yet that same product can be sold to the public, and there will not even be a warning on the label to tell unsuspecting purchasers that it has been disapproved by the Government. The Government's only remedy then is to catch up with the product after it has been placed on the market and bring a court action to have it removed. But this may not happen for a great length of time, and until it does, the public continues to buy the product. This has happened before, and there are products for sale today that have been disapproved by the Department of Agriculture.

The problem is similar to the one that had existed in the drug field until adequate legislation was passed. As with drugs, the issue is whether an undesirable product will come on the market and stay on the market until the authorities catch up with it, or whether premarket clearance will make sure that the public is never subjected to a hazard in the first place.

At our hearings last week, we learned that the Secretary of Agriculture strongly favors a change in the law to close this gap. Yet we also have learned that no bill has been submitted to Congress by the executive branch for a considerable length of time because of disagreements between agencies on the details of such a bill.

Of course, recommendations from the executive branch are often helpful to Congress, but I do not believe there is any need for Congress to wait for such recommendations. We have our own responsibilities, and initiating needed legislation is certainly one of the most important parts of our job.

I am therefore introducing today, for myself and the Senator from Kansas [Mr. PEARSON], a bill to end the practice of protest registrations. This means that premarketing clearance will be required of all insecticides without the exception presently contained in the law. Provision is made for hearings on all applications and judicial review of any disapproval.

The bill deletes the provisions now in the Federal Insecticide, Fungicide, and Rodenticide Act for registration of economic poisons under protest and prescribes the procedure to be followed in refusing or canceling registrations. Provision is made for referral of the question of eligibility of an article for registration to an advisory committee; for public hearing if requested with respect to the Secretary's action after consideration of the views of such committee; and for judicial review of the order issued by the Secretary after such hearing. The procedure generally follows that provided in the Federal Food, Drug, and Cosmetic Act with respect to pesticide chemicals. In addition, the bill gives the Secretary of Agriculture power

to require that every pesticide formulation carry its registration number on the label.

The need for this legislation has been recognized by the executive branch and by industry representatives. I am hopeful that hearings can soon be held.

I ask unanimous consent that the bill be printed at this point in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, introduced by Mr. RIBICOFF (for himself and Mr. PEARSON), was received, read twice by its title, referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2.z.(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended; 7 U.S.C. 1958 ed., Supp. III, 135(z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison."

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), changing the period at the end of section 3.a.(2)(c) to a semicolon, and adding after section 3.a.(2)(c), a new provision reading as follows: "and (d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may require the modification of the claims or labeling of, or cancel the registration of, an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary determines that registration of an economic poison should be refused, or that an economic poison that is registered does not appear to warrant the claims made for it or that the article or its labeling or other material required to be submitted does not comply with the provisions of this Act, he shall notify the applicant for registration or the registrant of his determination and the reasons therefor. Within thirty days after service of such notice, the applicant for registration or the registrant may file a petition requesting that the matter be referred to an advisory committee to be appointed by the Secretary. Each such advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The

size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, make a report and recommendation to the Secretary as to the registration of the article. After due consideration of the views of the committee and all other data before him, the Secretary shall make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. Any person adversely affected thereby may file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C., sec. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objections and issue an order granting, denying, or canceling the registration or requiring the modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until final action is taken concerning registration of the product. Until such final action such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the

registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. If such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. Subsection 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting the second proviso therein.

SEC. 6. Subsection 3.a.(1) and subsection 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered."

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment.

AMENDMENT OF INTERSTATE COMMERCE ACT, RELATING TO RECOVERY OF REASONABLE ATTORNEY'S FEES IN CERTAIN CASES

Mr. MAGNUSON. Mr. President, at the request of the American National

Cattlemen's Association and the National Woolgrowers Association, I introduce, for appropriate reference, a bill to amend the Interstate Commerce Act, with respect to recovery of a reasonable attorney's fee in case of successful maintenance of an action for recovery of damages sustained in transportation of property. I ask unanimous consent to have printed in the RECORD a brief in support of the bill by those two associations.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the brief will be printed in the RECORD.

The bill (S. 1606) to amend the Interstate Commerce Act, with respect to recovery of a reasonable attorney's fee in case of successful maintenance of an action for recovery of damages sustained in transportation of property, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, and referred to the Committee on Commerce.

The brief presented by Mr. MAGNUSON is as follows:

BRIEF IN SUPPORT PROPOSED BILL TO AMEND PARAGRAPH 11 OF SECTION 20 OF THE INTERSTATE COMMERCE ACT

That the proposed amendment is required by the farmers, producers, shippers and consignees of fruits, livestock, vegetables, and other perishable commodities to insure the payment of the full actual loss, damage, or injury to property in transportation caused by any common carrier, railroad, or transportation company as provided in paragraph (11) of section 20 of the Interstate Commerce Act, hereinafter termed the "act." In support of such amendment we respectfully say:

I. That paragraph (11) of section 20 constitutes the Carmack amendment, enacted as part of the Hepburn Act of June 29, 1906, as amended by the first Cummins amendment of March 4, 1915, the second Cummins amendment of August 9, 1916, the transportation act, 1920, the act of July 3, 1926, the Newton amendment of March 4, 1927, the act of April 23, 1930, United States Code, August 9, 1935; 34 Stat. 595; 38 Stat. 1197; 39 Stat. 441; 44 Stat. 835; 44 Stat. 1448; 46 Stat. 251; 49 Stat. 543, and 54 Stat. 919.

(a) That while paragraph (11) of section 20 definitely provides the liability of any common carrier, railroad, or transportation company . . . shall be the full actual loss, damage, or injury to the property caused by it or them, and further provides time for filing claims and instituting suits, it is silent as to reasonable attorney's fees in such suits.

II. (a) That section 8, and paragraph (2) of section 16 of the act, each contains provision respecting reasonable attorney's fee, substantially the same as here proposed to be added to paragraph (11) of section 20.

1. That, however, the U.S. Supreme Court in *Atlantic Coast Line R. Co. v. Riverside Mills* (219 U.S. 186 (1911)), held:

"Section 8 of the act, providing for the taxing of an attorney's fee as part of the costs, applies to cases where the cause of action is the doing of something made unlawful by some provision of the act, or the omission to do something required by the act, and there is a recovery of damages sustained in consequence of such violation of the act, but does not apply to cases where, as here, the loss or damage is in no way traceable to the violation of any provision of the act."

2. That the Court in *Meeker v. Lehigh Valley R. Co.* (236 U.S. 412 (1915)) further ruled, in substance:

"The services for which an attorney's fee is to be taxed and collected, as provided in sections 8 and 16 are those in Court action, involving violation of some provision of the act, in which the recovery is had and not those in the proceeding before the Interstate Commerce Commission, herein-after termed the 'Commission'."

3. That as loss, damage, or injury to property in transportation is not traceable to the violation of any provision of the act, as stated by the Court in *Atlantic Coast Line R. Co., supra*, the shipping public, under the present act, cannot recover reasonable attorney's fee as a part of the costs of the suit.

III. That the anomalous situation confronting the shipping interests is illustrated, using the same shipment, by the following:

1. That the rates and charges thereon are assailed before the Commission as unreasonable under section 1 of the act, and reparation is sought. After an investigation by the Commission, it finds for complainant and awards reparation. Complainant brings suit, and the Court, as is usual in such case, enters judgment for the plaintiff, and under section 16(2) of the act, reasonable attorney's fee is taxed and collected from defendant as a part of the costs of the suit.

2. That the same shipment was partly lost, damaged, or injured in transit. The owner files a claim, which the carrier refuses to pay, and the owner seasonably institutes suit, and sustains the burden of proof on the trial of the case. The Court enters judgment in favor of the owner for the full actual loss to the shipment. However, the owner must pay and bear the reasonable fee of his attorney as the present law governing such loss and damage suits estops the Court from including such fee as part of the costs of the suit. The owner is "out" the amount of the attorney's fee.

IV. That common carriers, railroads, or transportation companies have been and are fully cognizant of the foregoing facts, and proceed accordingly. Rarely do they pay more than 50 percent of the full actual loss, if anything, account loss, damage, or injury to perishable traffic, including livestock. Consequently, the owners of such traffic have been and are being deprived of millions of dollars annually to which they are rightfully and lawfully entitled. Thousands of such transactions could be cited, of which the following are representative:

1. Amount claim \$406.50: "The additional investigation conducted has developed time of loading origin, equipment was inspected and found to be mechanically okay and cars were freshly bedded. The shipment was handled in accordance with the contemplated schedule and was stopped for the normal times for F.W. & R. while enroute. You, of course, can appreciate the natural droppings from calves after being confined to cars for approximately 8 days would, of course, contribute considerably to condition of bedding at time of arrival destination. Also, we have been advised that this condition was not reported to the carrier until approximately 2 days after arrival at which time it was noted that calves were developing 'shipping fever'. As you know, shipping fever is a disease which increases in virulence and is a condition over which the carriers would have no control nor be responsible for due to the inherent weakness or natural propensity of the animals. * * * Therefore, have no alternative than to confirm disallowance of claim."

2. Amount claim \$2,402.16: "Shipment was handled in accordance with the contemplated

schedule, being stopped at * * * and * * * for feed, water, and rest. Stock was being unloaded at * * * with one dead being noted at that point. Upon arrival at destination, at time of unloading four head dead, seven down, five sick. Veterinarian was called, diagnosed sickness as being hemorrhagic septicemia, basing diagnosis on autopsy. Mr. * * * was notified and local veterinarian was authorized to treat the animals on the approval of Mr. * * * delivering carrier's agent."

"This being a clear record case, have no choice than to advise you claim for 11 dead * * * from hemorrhagic septicemia is respectfully disallowed. However, and so as to concede all possible doubt in favor of the claimant, I do offer to adjust for 50 percent the average value of one head dead * * * plus \$45 salvage realized from sale of one animal at, * * * or \$145.09, and would like to have your permission to so adjust. Other than amount offered claim being respectfully disallowed."

3. Amount claim \$375.58: "Now find that this shipment was loaded at, * * * received by the * * * from the * * * and arrived at stockyards, * * *, and unloaded. Reloaded at * * * unloaded * * * reloaded at * * * and unloaded * * *, reloaded and arrived destination same date, and unloaded."

"In view of the detailed service record, and in accordance with the uniform and consistent practice, and so as to concede all possible doubt in your favor, offer is made to adjust for 50 percent the average value of two head, or \$187.79, and would like your permission to do so. Other than the foregoing offer, balance of claim is respectfully disallowed."

That the following is a rare exception to the prevailing policy of the carriers to either deny any payment or to pay only 50 percent of the full actual loss, damage, or injury:

4. Amount claim \$250.80: "Investigation has also developed there was no carrier negligence, or mishandling, per copy of the movement attached. It is apparent the animals died of natural causes, or from getting down in the car and suffocating. * * * This would make the average value of the lambs to be \$21.24 each, or a total of \$233.64. In line with the uniform and consistent practice, am willing to adjust this claim on a basis of 75 percent of the \$233.64, or \$175.23. * * * I am therefore willing to adjust this claim for 75 percent of \$233.64, the value of the 11 head of sheep, plus \$18.20 refund on the feed at * * * or a total of \$193.43, and request your permission to do so. Any amount over the proposed offer of settlement is respectfully disallowed."

V. That claimants under the existing law are forced, generally, to pay and bear their attorneys' fees in suits for loss, damage, or injury to perishable shipments, including livestock, is the proximate cause for the chiseling tactics of the carriers hereinbefore outlined respecting such claims, is clear. In some instances where claimants have refused to accept less than the amount of the full actual loss, damage, or injury, and signified their intention to bring suit, the carriers have reluctantly increased their offers to as much as 75 percent of such loss; in other cases, the carriers have pointed out to claimants that the latter would have to pay their attorneys' fees, and the carriers have offered to and did pay on such claims the amount of the full loss, damage, or injury, less the estimated amount of the attorneys' fees. Therefore, the farmers, producers, shippers, and consignees of fruits, livestock, vegetables, and other perishable commodities, are subjected to unjust discrimination,

undue prejudice and preference at the hands of the carriers in the settlement of legitimate claims for loss, damage, or injury. Consequently the proposed amendment to paragraph (11) of section 20 should be enacted into law.

Respectfully submitted.

AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION,

Denver, Colo.

NATIONAL WOOL GROWERS ASSOCIATION.

Salt Lake City, Utah.

AMENDMENT OF PARAGRAPH (4), SECTION 15, OF INTERSTATE COMMERCE ACT

Mr. MAGNUSON. Mr. President, at the request of the American National Cattlemen's Association and the National Woolgrowers' Association, I introduce for appropriate reference, a bill to amend paragraph (4) of section 15 of the Interstate Commerce Act. I ask unanimous consent to have printed in the RECORD a brief in support of the bill by those two associations.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the brief will be printed in the RECORD.

The bill (S. 1607) to amend paragraph (4) of section 15 of the Interstate Commerce Act, introduced by Mr. MAGNUSON, by request, was received, read twice by its title, and referred to the Committee on Commerce.

The brief presented by Mr. MAGNUSON is as follows:

BRIEF IN SUPPORT OF PROPOSED BILL TO AMEND PARAGRAPH 4 OF SECTION 15 OF THE INTERSTATE COMMERCE ACT

That paragraph 4 of section 15 of the Interstate Commerce Act, hereinafter termed the act, contains limitations on the power of the Interstate Commerce Commission, hereinafter termed the Commission, to prescribe through routes, and is commonly known and hereinafter referred to as the short-haul provision of the act, and provides:

"In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs."

88TH CONGRESS
1ST SESSION

S. 1605

IN THE SENATE OF THE UNITED STATES

MAY 27, 1963

Mr. RIBICOFF (for himself and Mr. PEARSON) introduced the following bill;
which was read twice and referred to the Committee on Agriculture and
Forestry

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2.(2) (b) of the Federal Insecticide, Fungi-
4 cide, and Rodenticide Act (61 Stat. 163, as amended, 7
5 U.S.C. 1958 ed., Supp. III, 135 (2) (b)) is hereby
6 amended by inserting before the semicolon at the end there-
7 of the following phrase: "other than the registration num-
8 ber assigned to the economic poison".

9 SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C.

1 135a) is hereby amended by deleting the word "and" at
2 the end of section 3.a. (2) (b), changing the period at the
3 end of section 3.a. (2) (c) to a semicolon, and adding after
4 section 3.a. (2) (c), a new provision reading as follows:
5 "and (d), when required by regulation of the Secretary
6 to effectuate the purposes of this Act, the registration num-
7 ber assigned to the article under this Act".

8 SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
9 135b) is hereby amended by changing the word "registrant"
10 wherever it appears in subsection a. and in the first sentence
11 of subsection c. to "applicant for registration" and by delet-
12 ing the remainder of subsection c. and inserting in lieu thereof
13 the following:

14 "If, upon receipt of such notice, the applicant for regis-
15 tration does not make the corrections, the Secretary shall
16 refuse to register the article. The Secretary, in accordance
17 with the procedures specified herein, may require the modi-
18 fication of the claims or labeling of, or cancel the registration
19 of, an economic poison whenever it does not appear that the
20 article or its labeling or other material required to be sub-
21 mitted complies with the provisions of this Act. Whenever
22 the Secretary determines that registration of an economic
23 poison should be refused, or that an economic poison that is
24 registered does not appear to warrant the claims made for it
25 or that the article or its labeling or other material required

1 to be submitted does not comply with the provisions of this
2 Act, he shall notify the applicant for registration or the
3 registrant of his determination and the reasons therefor.
4 Within thirty days after service of such notice, the applicant
5 for registration or the registrant may file a petition requesting
6 that the matter be referred to an advisory committee to be
7 appointed by the Secretary. Each such advisory committee
8 shall be composed of experts, qualified in the subject matter
9 and of adequately diversified professional background selected
10 by the National Academy of Sciences and shall include one
11 or more representatives from land-grant colleges. The size
12 of the committee shall be determined by the Secretary.
13 Members of an advisory committee shall receive as compen-
14 sation for their services a reasonable per diem, which the
15 Secretary shall by rules and regulations prescribe, for time
16 actually spent in the work of the committee, and shall in
17 addition be reimbursed for their necessary traveling and
18 subsistence expenses while so serving away from their places
19 of residence. The members shall not be subject to any other
20 provisions of law regarding the appointment and compensa-
21 tion of employees of the United States. The Secretary shall
22 furnish the committee with adequate clerical and other assist-
23 ance, and shall by rules and regulations prescribe the proce-
24 dures to be followed by the committee. The Secretary shall

1 forthwith submit to such committee the application for
2 registration in the article and all relevant data before him.
3 The petitioner, as well as representatives of the United States
4 Department of Agriculture, shall have the right to consult
5 with the advisory committee. As soon as practicable after
6 any such submission, but not later than sixty days thereafter,
7 unless extended by the Secretary for an additional sixty days,
8 the committee shall, after independent study of the data sub-
9 mitted by the Secretary and all other pertinent information
10 available to it, make a report and recommendation to the
11 Secretary as to the registration of the article. After due
12 consideration of the views of the committee and all other
13 data before him, the Secretary shall make his determination
14 and issue an order, with findings of fact, with respect to
15 registration of the article and notify the applicant for regis-
16 tration or registrant. Any person adversely affected thereby
17 may file objections thereto and request a public hearing
18 thereon. In the event a hearing is requested, the Secretary
19 shall, after due notice, hold such public hearing for the pur-
20 pose of receiving evidence relevant and material to the
21 issues raised by such objections. Any report, recommenda-
22 tions, underlying data, and reasons certified to the Secretary
23 by an advisory committee shall be made a part of the record
24 of the hearing, if relevant and material, subject to the pro-
25 visions of section 7 (c) of the Administrative Procedure

1 Act (5 U.S.C. 1006 (c)). The National Academy of
2 Sciences shall designate a member of the advisory committee
3 to appear and testify at any such hearing with respect to
4 the report and recommendations of such committee upon
5 request of the Secretary, the petitioner, or the officer conduct-
6 ing the hearing: *Provided*, That this shall not preclude any
7 other member of the advisory committee from appearing and
8 testifying at such hearing. As soon as practicable after com-
9 pletion of the hearing, the Secretary shall act upon such
10 objections and issue an order granting, denying, or canceling
11 the registration or requiring the modification of the claims
12 or the labeling. Such order shall be based only on substan-
13 tial evidence of record at such hearing, including any report,
14 recommendations, underlying data, and reason certified to
15 the Secretary by an advisory committee, and shall set forth
16 detailed findings of fact upon which the order is based. All
17 data submitted to the Secretary or to an advisory committee
18 in support of a petition under this section shall be considered
19 confidential by the Secretary and by such advisory commit-
20 tee until final action is taken concerning registration of the
21 product. Until such final action such data shall not be
22 revealed to any person other than those authorized by the
23 Secretary or by an advisory committee in the carrying out
24 of their official duties under this section. Notwithstanding

1 any other provision of this section, the Secretary may, when
2 he finds that such action is necessary to prevent an imminent
3 hazard to the public, by order, suspend the registration of
4 an economic poison immediately. In such case, he shall give
5 the registrant prompt notice of such action and afford the
6 registrant the opportunity to have the matter submitted to
7 an advisory committee and for an expedited hearing under
8 this section. Final orders of the Secretary under this section
9 shall be subject to judicial review, in accordance with the
10 provisions of subsection d. In no event shall registration of
11 an article be construed as a defense for the commission of
12 any offense prohibited under section 3 of this Act.”

13 SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
14 135b) is hereby further amended by redesignating subsec-
15 tions d. and e. as subsections e. and f., and by adding a new
16 subsection d., as follows:

17 “d. In a case of actual controversy as to the validity
18 of any order under this section, any person who will be
19 adversely affected by such order may obtain judicial review
20 by filing in the United States court of appeals for the cir-
21 cuit wherein such person resides or has his principal place
22 of business, or in the United States Court of Appeals for the
23 District of Columbia Circuit, within sixty days after the
24 entry of such order, a petition praying that the order be
25 set aside in whole or in part. A copy of the petition shall

1 be forthwith transmitted by the clerk of the court to the
2 Secretary, or any officer designated by him for that purpose,
3 and thereupon the Secretary shall file in the court the rec-
4 ord of the proceedings on which he based his order, as pro-
5 vided in section 2112 of title 28, United States Code. Upon
6 the filing of such petition, the court shall have exclusive
7 jurisdiction to affirm or set aside the order complained of
8 in whole or in part. The findings of the Secretary with
9 respect to questions of fact shall be sustained if supported
10 by substantial evidence when considered on the record as
11 a whole, including any report and recommendation of an
12 advisory committee. If application is made to the court
13 for leave to adduce additional evidence, the court may order
14 such additional evidence to be taken before the Secretary,
15 and to be adduced upon the hearing in such manner and
16 upon such terms and conditions as to the court may seem
17 proper, if such evidence is material and there were reason-
18 able grounds for failure to adduce such evidence in the
19 proceedings below. The Secretary may modify his find-
20 ings as to the facts and order by reason of the additional
21 evidence so taken, and shall file with the court such modi-
22 fied findings and order. The judgment of the court affirming
23 or setting aside, in whole or in part, any order under this
24 section shall be final, subject to review by the Supreme
25 Court of the United States upon certiorari or certification

1 as provided in section 1254 of title 18 of the United States
2 Code. The commencement of proceedings under this sec-
3 tion shall not, unless specifically ordered by the court to
4 the contrary, operate as a stay of an order. The court shall
5 advance on the docket and expedite the disposition of all
6 causes filed therein pursuant to this section.”

7 SEC. 5. Subsection 8.b. of said Act (61 Stat. 170; 7
8 U.S.C. 135f. (b)) is hereby amended by deleting the second
9 proviso therein.

10 SEC. 6. Subsection 3.a. (1) and subsection 9.a. (1) (b)
11 of said Act (61 Stat. 166, 170; 7 U.S.C. 135a. (a) (1),
12 135g. (a) (1) (b)) are hereby amended by changing the
13 phrase “has not been registered” wherever it appears therein,
14 to read “is not registered.”

15 SEC. 7. This Act and the amendments made hereby
16 shall become effective upon enactment.

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

By Mr. RUBICOF and Mr. PEARSON

MAY 27, 1963

Read twice and referred to the Committee on
Agriculture and Forestry

88TH CONGRESS
1ST SESSION

H. R. 6828

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1963

MR. ROSENTHAL introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2.z (2) (b) of the Federal Insecticide, Fungi-
4 cide, and Rodenticide Act (61 Stat. 163, as amended, 7
5 U.S.C. 1958 ed., Supp. III, 135 (z) (2) (b)) is hereby
6 amended by inserting before the semicolon at the end there-
7 of the following phrase: "other than the registration num-
8 ber assigned to the economic poison".

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1 135a) is hereby amended by deleting the word "and" at
2 the end of section 3.a. (2) (b), changing the period at the
3 end of section 3.a. (2) (c) to a semicolon, and adding after
4 section 3.a. (2) (c), a new provision reading as follows:
5 "and (d), when required by regulation of the Secretary
6 to effectuate the purposes of this Act, the registration num-
7 ber assigned to the article under this Act".

8 SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
9 135b) is hereby amended by changing the word "registrant"
10 wherever it appears in subsection a. and in the first sentence
11 of subsection c. to "applicant for registration" and by delet-
12 ing the remainder of subsection c. and inserting in lieu thereof
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15 tration does not make the corrections, the Secretary shall
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17 with the procedures specified herein, may require the modi-
18 fication of the claims or labeling of, or cancel the registration
19 of, an economic poison whenever it does not appear that the
20 article or its labeling or other material required to be sub-
21 mitted complies with the provisions of this Act. Whenever
22 the Secretary determines that registration of an economic
23 poison should be refused, or that an economic poison that is
24 registered does not appear to warrant the claims made for it
25 or that the article or its labeling or other material required

1 to be submitted does not comply with the provisions of this
2 Act, he shall notify the applicant for registration or the
3 registrant of his determination and the reasons therefor.
4 Within thirty days after service of such notice, the applicant
5 for registration or the registrant may file a petition requesting
6 that the matter be referred to an advisory committee to be
7 appointed by the Secretary. Each such advisory committee
8 shall be composed of experts, qualified in the subject matter
9 and of adequately diversified professional background selected
10 by the National Academy of Sciences and shall include one
11 or more representatives from land-grant colleges. The size
12 of the committee shall be determined by the Secretary.
13 Members of an advisory committee shall receive as compen-
14 sation for their services a reasonable per diem, which the
15 Secretary shall by rules and regulations prescribe, for time
16 actually spent in the work of the committee, and shall in
17 addition be reimbursed for their necessary traveling and
18 subsistence expenses while so serving away from their places
19 of residence. The members shall not be subject to any other
20 provisions of law regarding the appointment and compensa-
21 tion of employees of the United States. The Secretary shall
22 furnish the committee with adequate clerical and other assist-
23 ance, and shall by rules and regulations prescribe the proce-
24 dures to be followed by the committee. The Secretary shall

1 forthwith submit to such committee the application for
2 registration in the article and all relevant data before him.
3 The petitioner, as well as representatives of the United States
4 Department of Agriculture, shall have the right to consult
5 with the advisory committee. As soon as practicable after
6 any such submission, but not later than sixty days thereafter,
7 unless extended by the Secretary for an additional sixty days,
8 the committee shall, after independent study of the data sub-
9 mitted by the Secretary and all other pertinent information
10 available to it, make a report and recommendation to the
11 Secretary as to the registration of the article. After due
12 consideration of the views of the committee and all other
13 data before him, the Secretary shall make his determination
14 and issue an order, with findings of fact, with respect to
15 registration of the article and notify the applicant for regis-
16 tration or registrant. Any person adversely affected thereby
17 may file objections thereto and request a public hearing
18 thereon. In the event a hearing is requested, the Secretary
19 shall, after due notice, hold such public hearing for the pur-
20 pose of receiving evidence relevant and material to the
21 issues raised by such objections. Any report, recommenda-
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23 by an advisory committee shall be made a part of the record
24 of the hearing, if relevant and material, subject to the pro-
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2 Sciences shall designate a member of the advisory committee
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4 the report and recommendations of such committee upon
5 request of the Secretary, the petitioner, or the officer conduct-
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7 other member of the advisory committee from appearing and
8 testifying at such hearing. As soon as practicable after com-
9 pletion of the hearing, the Secretary shall act upon such
10 objections and issue an order granting, denying, or canceling
11 the registration or requiring the modification of the claims
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21 product. Until such final action such data shall not be
22 revealed to any person other than those authorized by the
23 Secretary or by an advisory committee in the carrying out
24 of their official duties under this section. Notwithstanding

1 any other provision of this section, the Secretary may, when
2 he finds that such action is necessary to prevent an imminent
3 hazard to the public, by order, suspend the registration of
4 an economic poison immediately. In such case, he shall give
5 the registrant prompt notice of such action and afford the
6 registrant the opportunity to have the matter submitted to
7 an advisory committee and for an expedited hearing under
8 this section. Final orders of the Secretary under this section
9 shall be subject to judicial review, in accordance with the
10 provisions of subsection d. In no event shall registration of
11 an article be construed as a defense for the commission of
12 any offense prohibited under section 3 of this Act.”

13 SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
14 135b) is hereby further amended by redesignating subsec-
15 tions d. and e. as subsections e. and f., and by adding a new
16 subsection d., as follows:

17 “d. In a case of actual controversy as to the validity
18 of any order under this section, any person who will be
19 adversely affected by such order may obtain judicial review
20 by filing in the United States court of appeals for the cir-
21 cuit wherein such person resides or has his principal place
22 of business, or in the United States Court of Appeals for the
23 District of Columbia Circuit, within sixty days after the
24 entry of such order, a petition praying that the order be
25 set aside in whole or in part. A copy of the petition shall

1 be forthwith transmitted by the clerk of the court to the
2 Secretary, or any officer designated by him for that purpose,
3 and thereupon the Secretary shall file in the court the rec-
4 ord of the proceedings on which he based his order, as pro-
5 vided in section 2112 of title 28, United States Code. Upon
6 the filing of such petition, the court shall have exclusive
7 jurisdiction to affirm or set aside the order complained of
8 in whole or in part. The findings of the Secretary with
9 respect to questions of fact shall be sustained if supported
10 by substantial evidence when considered on the record as
11 a whole, including any report and recommendation of an
12 advisory committee. If application is made to the court
13 for leave to adduce additional evidence, the court may order
14 such additional evidence to be taken before the Secretary,
15 and to be adduced upon the hearing in such manner and
16 upon such terms and conditions as to the court may seem
17 proper, if such evidence is material and there were reason-
18 able grounds for failure to adduce such evidence in the
19 proceedings below. The Secretary may modify his find-
20 ings as to the facts and order by reason of the additional
21 evidence so taken, and shall file with the court such modi-
22 fied findings and order. The judgment of the court affirming
23 or setting aside, in whole or in part, any order under this
24 section shall be final, subject to review by the Supreme
25 Court of the United States upon certiorari or certification

1 as provided in section 1254 of title 18 of the United States
2 Code. The commencement of proceedings under this sec-
3 tion shall not, unless specifically ordered by the court to
4 the contrary, operate as a stay of an order. The court shall
5 advance on the docket and expedite the disposition of all
6 causes filed therein pursuant to this section.”

7 SEC. 5. Subsection 8.b. of said Act (61 Stat. 170; 7
8 U.S.C. 135f. (b)) is hereby amended by deleting the second
9 proviso therein.

10 SEC. 6. Subsection 3.a. (1) and subsection 9.a. (1) (b)
11 of said Act (61 Stat. 166, 170; 7 U.S.C. 135a. (a) (1) ,
12 135g. (a) (1) (b)) are hereby amended by changing the
13 phrase “has not been registered” wherever it appears therein,
14 to read “is not registered.”

15 SEC. 7. This Act and the amendments made hereby
16 shall become effective upon enactment.

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

By Mr. ROSENTHAL,

JUNE 5, 1963

Referred to the Committee on Agriculture

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Oct. 17, 1963
For actions of Oct. 16, 1963
88th-1st; No. 166

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HIGHLIGHTS: Senate passed water pollution control bill. Senate committee voted to report bill to prohibit registration of pesticides under protest. Sen. Javits inserted items supporting President's decision not to prohibit sale of wheat to Russia. Sen. Humphrey commended school lunch program. Sen. Allott inserted resolution favoring increased appropriations for forest highways. Senate committee voted to report Ozark National Rivers recreation bill. Senate considered bill to validate certain rice acreage allotments. Rep. Purcell favored a wheat sale to Russia.

SENATE

- 1. WATER POLLUTION.** By a vote of 69 to 11, passed as reported S. 649, to increase grants for water pollution control facilities and establish a Water Pollution Control Administration in HEW (pp. 18658, 18661-72, 18681-703). Rejected an amendment by Sen. Cooper to require public hearings by HEW for the purpose of making recommendations to the Congress on water pollution control measures (pp. 18671-94). See Digest No. 162 for a summary of the provisions of the bill.
- 2. PESTICIDES.** The Agriculture and Forestry Committee voted to report (but did not actually report) with amendments S. 1605, to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to provide for labeling of economic poisons with registration numbers to eliminate registration under protest.

Sen. Humphrey commended the action of the Committee and the efforts of Sen. Ribicoff in behalf of this legislation and inserted an article from American Forests magazine, "Senator Ribicoff Would End 'Protest Registration' of Insecticides." pp. 18709-11

3. RECREATION. The Interior and Insular Affairs Committee voted to report (but did not actually report) with amendment S. 16, to provide for the establishment of the Ozark National Rivers, Mo., recreation area (proposed recreation area would include certain national forest lands). p. D813
4. RICE ALLOTMENTS. H. J. Res. 192, to provide for the validation of certain rice acreage allotments for 1962 and prior crops, was made the pending business. p. 18725
5. WATER RESOURCES; RESEARCH. The Interior and Insular Affairs Committee voted to report (but did not actually report) with amendment S. J. Res. 49, to authorize Interior to carry out a program for control of phreatophytes along the Pecos River channel, N. Mex. and Tex. p. D813
6. RECLAMATION. The Interior and Insular Affairs Committee voted to report (but did not actually report) with amendment S. 26, to authorize construction of the Dixie reclamation project, Utah. p. D813
7. WHEAT; FOREIGN TRADE. Sen. Javits inserted two editorials supporting the President's decision not to prohibit a sale of wheat to Russia, and he stated that he has "warned that this 'one-shot' deal might be used as a way to engage in several trade deals which would call for much more from the Soviet Union." pp. 18680-1
8. SCHOOL LUNCH. Sen. Humphrey commended the school lunch program, stated that it is a program "that has almost universal acceptance and support," and inserted a USDA press release, "Secretary Freeman Urges National School Lunch Week Observance." p. 18711
9. FOREST HIGHWAYS. Sen. Allott inserted a resolution of the Western Association of State Highway Officials urging increased annual appropriations for forest highways "from the present level of \$33 million to \$85 million." p. 18713
10. FOOD PACKAGING. Sen. Douglas supported enactment of S. 387, the truth-in-packaging bill, so as "to put the consumer on a more equal footing with the manufacturer in regard to those market basket commodities which the buyer can no longer examine before he buys," and inserted an article, "Food Packaging and Buyers' Rights." pp. 18713-4
11. CABINET MEMBERS' TRAVEL. Sen. Tower inserted a critical article reviewing recent travel by members of the Cabinet, including references to Secretary Freeman's recent travel to Russia and a trip to Utah. p. 18718
12. EMPLOYMENT. Sen. Proxmire criticized the availability and reliability of statistics on domestic unemployment and urged a program to "improve the quality of our unemployment statistics" and that the administration "begin to consider an array of programs designed to meet specific types of unemployment which currently exists." pp. 18733

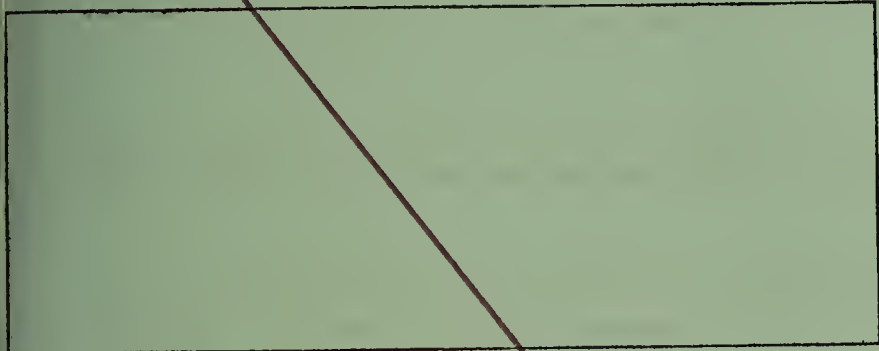
Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
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Issued Oct 22, 1963
For actions of Oct 21, 1963
88th-1st; No. 168



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HIGHLIGHTS: Senate committee reported bill to prohibit registration of pesticides under protest. Senate committee voted to report (Oct. 18) foreign aid authorization bill. Senate committee reported bill for establishment of Ozark National Rivers recreation area. Sen. Proxmire expressed concern over possible sale of wheat to Russia. Sen. McCarthy inserted item supporting a sale of wheat to Russia. Both Houses received President's report on operation of trade agreements program.

SENATE

1. PESTICIDES. The Agriculture and Forestry Committee reported with amendment S. 1605, to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to provide for labeling of economic poisons with registration numbers to eliminate registration under protest (S. Rept. 573). p. 18839
2. RECREATION. The Interior and Insular Affairs Committee reported with amendment S. 16, to provide for the establishment of the Ozark National Rivers, Mo., recreation area which would include certain national forest lands (S. Rept. 575). p. 18839
3. FOREIGN AID. The Foreign Relations Committee (on Oct. 18, during adjournment)

voted to report (but did not actually report) H. R. 7885, the foreign aid authorization bill for 1964. The "Daily Digest" includes a table comparing funds requested by the President, authorized by the House, and approved by the committee. p. D824

4. WATER RESOURCES; RESEARCH. The Interior and Insular Affairs Committee reported with amendment S. J. Res. 49, to authorize Interior to carry out a program for control of phreatophytes along the Pecos River channel, N. Mex. and Tex. (S. Rept. 572). p. 18839
5. RECLAMATION. The Interior and Insular Affairs Committee reported with amendment S. 26, to authorize construction of the Dixie reclamation project, Utah (S. Rept. 574). p. 18839
6. MILITARY CONSTRUCTION. The Armed Services Committee reported with amendment H. R. 6500, to authorize construction at military installations (S. Rept. 571). p. 18839
7. FOREIGN TRADE. Both Houses received from the President the annual report on the operation of the trade agreements program (H. Doc. 170)(pp. 18837-8, 18955-6). The President stated that U. S. exports have reached a new high of \$20.9 billion (\$4.5 billion more than our imports), that there was "further freeing of trade in agriculture, helping U.S. farm exports to hold their own at the \$5 billion mark", that the next round of negotiations under the GATT can "lead to an expansion of free world trade in all products and in all directions" and can "help deal with the problem of agricultural protectionism and the dilemma of hunger and glut," and that the U. S. will continue to press for the removal of all restrictions that hinder our exports.
8. WHEAT; FOREIGN TRADE. Sen. Proxmire expressed concern over possible sale of wheat to Russia, contended that she needed wheat "in order to keep its heavy commitments to its satellites in Eastern Europe and Cuba," and inserted a table on Soviet exports and imports of grain from 1958 to 1962. pp. 18851-2
Sen. McCarthy inserted an article stating that the National Catholic Rural Life Conference endorsed a sale of wheat to Russia and Soviet satellite countries at its recent board of directors meeting. p. 18898
9. TRANSPORTATION. Sen. Lausche expressed concern that the Great Lakes-St. Lawrence Seaway "is presently realizing only a modest proportion of available traffic despite abundant economic activity," and stated that the Seaway has provided a less expensive rate for the farmers' produce, particularly grain. pp. 18849-50
10. WATER RESOURCES; WILDLIFE. Sen. Gruening discussed the effects of water resource development projects on the development and maintenance of waterfowl. pp. 18928-9
11. CIVIL DEFENSE. Received from the Defense Department a report on property acquisitions of emergency supplies and equipment by the Office of Civil Defense. p. 18838
12. ELECTRIFICATION. Received from the Federal Power Commission a publication, "All-Electric Homes, Annual Bills, January 1, 1963." p. 18838

REGISTRATION OF PESTICIDE CHEMICALS

OCTOBER 21 (legislative day, OCTOBER 15), 1963.—Ordered to be printed

Mr. JORDAN of North Carolina, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany S. 1605]

The Committee on Agriculture and Forestry, to whom was referred the bill (S. 1605), to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, having considered the same, report thereon with a recommendation that it do pass with an amendment.

SHORT EXPLANATION

This bill would amend the Federal Insecticide, Fungicide, and Rodenticide Act to—

(1) repeal the provision permitting registration of economic poisons under protest, and

(2) permit the Federal registration number to be shown on the label (and require it to be so shown if the Secretary of Agriculture so provides by regulation).

In lieu of protest registration, the bill makes various appeal procedures available where registration is refused or canceled. These include reference to an advisory committee for study and report, further determination by the Secretary, public hearings, a final order by the Secretary, and judicial review of such order.

Immediate suspension of registration is authorized when necessary to prevent an imminent hazard to the public, but the appeal procedures are then accorded to the applicant, including an expedited hearing.

The committee amendment does not change the purpose of the bill, but merely incorporates in it a number of technical corrections and procedural provisions suggested by the Department of Agriculture and industry representatives.

NEED FOR LEGISLATION

The Federal Insecticide, Fungicide, and Rodenticide Act prohibits interstate commerce in "economic poisons," such as insecticides, herbicides, and plant regulators, unless they have been registered with the Secretary of Agriculture, are properly labeled, not adulterated or misbranded, and meet various other requirements designed to protect the public and assure it of safe and effective products. The act is enforced through criminal penalties under section 8 and seizures under section 9.

The Secretary is required, upon application, to register any economic poison if the poison, its labeling, and other material required to be submitted comply with the requirements of the act.

At present, however, the Secretary is also required to register under protest poisons which do not comply with the requirements of the act if, after he has advised the registrant that the poison does not meet the act's requirements, the registrant insists on registration. In such case the registrant is protected from the effects of failure to register, but not from penalties and seizure if the product is actually misbranded or otherwise out of compliance with the act. The maximum fine is \$500 higher in some cases where the article has been registered under protest. The principal effect of registration under protest is to shift the burden of proof from the registrant to the Government. If the product is not registered, the penalty or seizure provisions can be applied on that ground. If it is registered under protest, the Government has the burden of proving that the product does not comply with the act.

Thus, at present, the Secretary can be required to register a product even though he is convinced that it is ineffective and dangerous to human life. He can proceed against it in such case only after it has moved in interstate commerce, and he then has the burden of proving that it violates the law. The bill would correct this situation and afford greater protection to the public by repealing the authority for registration under protest. In its place the bill provides that applicants dissatisfied with the Secretary's action in refusing or canceling registration may have recourse to advisory committee proceedings, public hearings, and eventually judicial review. Thus the bill affords adequate protection to the public, and protects applicants for registration from arbitrary or ill-advised action by the Department.

Section 2z(2)(b) of the act, at present, provides that any economic poison shall be misbranded, if its labeling bears any reference to registration under the act. The bill would permit the registration number to be shown and authorize the Secretary to require that it be shown. This would enable the user of the product to determine that it had been registered under the act and that the Department had made the necessary investigation and determined that it was truthfully labeled and complied with the requirements of the act. Use of the registration number should not create any inference that the product was recommended or otherwise sponsored by the Government.

The witness for the National Agricultural Chemicals Association at the committee's hearings on the bill testified that 47 States require registration of pesticides, generally following the pattern of the Federal act and regulations, and pointed out the difficulties that might be encountered if the labeling were required to carry 48 different

registration numbers. This would, of course, be an unfortunate situation; and the committee assumes that the States would have no reason to, and would not, follow the provisions of the Federal law in this respect.

HEARINGS

Hearings were held on S. 1605 by the committee's Subcommittee on Agricultural Research and General Legislation on September 10. All witnesses favored the objectives of the bill. The Department of Agriculture and the National Agricultural Chemicals Association proposed a number of technical and procedural amendments, and these have been incorporated in substance in the committee amendment to the satisfaction of the Department and the association.

The Department of the Interior recommended two amendments dealing with fish and wildlife. One would have required the advisory committee to include on its membership a biologist familiar with the effects of pesticides on fish and wildlife. The other would have included hazard to useful animals and plants in the imminent hazard clause justifying summary suspension of registration. The committee felt that each of these amendments overemphasized this particular facet of the problem and might create doubts as to the consideration to be given to facets not specifically mentioned. In some cases, such as that of a household insecticide, the effect on fish and wildlife would not appear to be a particularly important consideration. Where it was an important consideration it should be given all the weight due it, and the committee would expect that to be done without special provision being included in the bill.

The Department of Health, Education, and Welfare recommended two amendments. One would make it clear that confidential data might be revealed to the heads of other Federal agencies consulted by the Secretary of Agriculture and persons authorized by such heads of other Federal agencies. The committee substantially revised and clarified the provisions of the bill dealing with confidential data so that the same rule applies to procedures following refusal or cancellation of registration as applies prior to such refusal or cancellation. The only information required by this rule to be kept confidential is that relating to formulas. The committee amendment makes it clear that this information may be made available to other Federal agencies, and that it may also be revealed when necessary under the act at public hearings or in findings of fact issued by the Secretary.

The other amendment proposed by the Department of Health, Education, and Welfare would require copies of all applications to be transmitted to that Department, with an opinion of the Secretary of Agriculture as to whether use as directed or as reasonably foreseeable is likely to result in a residue on food and the amount thereof; prohibit registration until the Secretary of Health, Education, and Welfare had certified that no unsafe residue on food was likely; prohibit registration unless data was submitted to that Department showing the chemical identity of the poison, a method of determining residues on food if such residues might reasonably be expected, and results of investigations as to residues on food in such cases; and require cancellation or suspension of any registration if that Department lowered the residue tolerance below the expected residue or found that in actual use the poison left an unsafe residue. It would also provide procedures

for the determinations by that Department similar to those for determinations by the Department of Agriculture, including separate, joint, or parallel advisory committees, separate, joint, or parallel public hearings, and so on. The committee felt that this duplication of administration and procedures was unnecessary and burdensome and would weaken the authority of the Secretary of Agriculture.

Under the Federal Food, Drug, and Cosmetic Act the Department of Health, Education, and Welfare has jurisdiction over adulterated foods moving in interstate commerce and sets the tolerances, if any, of residual economic poisons which may be permitted on raw agricultural commodities and the tolerances, if any, of other food additives which may be permitted on other food commodities. If no tolerance is established, the contaminated foods cannot move in interstate commerce. The Federal Food, Drug, and Cosmetic Act provides for advisory committees, hearings, and other procedures for the Department of Health, Education, and Welfare to reach its determinations. Under the Federal Insecticide, Fungicide, and Rodenticide Act, the Secretary of Agriculture must determine if the label contains directions adequate if complied with for the protection of the public and proper precautionary statements. If it would result in the production of food which would be prohibited by the Federal Food, Drug, and Cosmetic Act from being sold in interstate commerce, the public would not be protected, and the label could not be registered. The Secretary of Agriculture therefore must determine, among other matters, whether the economic poison will leave a residue in excess of the tolerance, if any, permitted by the Department of Health, Education, and Welfare and require the labeling to be changed as necessary in the light of any reduction in the permitted tolerance. Under the amendment proposed by the Department of Health, Education, and Welfare, that Department would also make this determination and would make it not only on the basis of the directions on the label or customary practice, but also on the basis of any reasonable likelihood of a residue under any reasonably foreseeable conditions of use. The amendment proposed by the Department of Health, Education, and Welfare would thus provide for a third separate set of procedures with its own advisory committee, hearings, and judicial review. There would be one procedure for the Department of Health, Education, and Welfare to determine permissible tolerances, another for the Department of Health, Education, and Welfare to determine the existence of residues under any foreseeable condition, and another for the Department of Agriculture to determine, among other matters, the existence of residues under reasonably expected usage. The committee did not include this amendment in the committee substitute.

SECTION BY SECTION EXPLANATION

The first section of the bill permits the labeling of an economic poison to carry its registration number under the act. At present section 2z(2)(b) of the act provides that an economic poison is misbranded if its label bears any reference to registration under the act. The first section of the bill amends section 2z(2)(b) to permit the registration number to be shown.

Section 2 provides that the label on an economic poison must show its registration number when required by regulation of the Secretary of Agriculture.

Section 3 repeals the existing provision which permits registration of an economic poison under protest and provides instead for various appeals from the Secretary's original determination that registration should be refused or canceled. The new procedure is modeled after that contained in section 408 of the Federal Food, Drug, and Cosmetic Act for the determination of tolerances of pesticide chemicals on raw agricultural commodities. Under the new procedure whenever the Secretary refused registration or determined that registration should be canceled the applicant or registrant would be notified of that action and the reasons therefor. The applicant would then have 30 days to request reference to an advisory committee or to file objections and request a public hearing. The Secretary could also refer the matter to an advisory committee at any time on his own motion. Each advisory committee would consist of qualified experts selected by the National Academy of Sciences. The size of the committee would be determined by the Secretary and members would receive a reasonable per diem for their services, plus traveling and subsistence expenses, such costs being assessed against the party requesting reference to the advisory committee. The committee would submit recommendations to the Secretary within 60 days after reference, and the Secretary within 90 days thereafter would notify the applicant or registrant of his determination. The applicant would then have 60 days to file objections and request a public hearing. Following the hearing the Secretary would issue his order granting, denying, or canceling registration.

If necessary to prevent an imminent hazard to the public, the Secretary could suspend registration of an economic poison immediately and afford the registrant the opportunity for reference to an advisory committee and an expedited hearing following such suspension.

Section 4 adds a new section d to section 4 of the act to provide for judicial review of the Secretary's orders by petition to an appropriate U.S. court of appeals within 60 days after entry of the order. The court would then have exclusive jurisdiction to affirm or set aside the order. The Secretary's findings of fact would be sustained if supported by substantial evidence when considered on the record as a whole.

Section 5 strikes out the provision of section 8 for higher maximum fines and automatic termination of registration in the case of offenses of which the registrant has been warned at the time of registration under protest. In view of repeal by section 3 of the provision for registration under protest, the provision repealed by this section would no longer have any meaning.

Section 6 makes clarifying changes in sections 3a(1) and section 9a(1)(b) of the act, making it clear that those sections apply to an economic poison which is not registered, without regard to whether it may at some time have been registered. Section 6 substitutes "is not registered" for "has not been registered" in each section. Section 3a(1), as thus amended, prohibits interstate commerce in any economic poison which "is not registered," while section 9a(1)(b), as thus amended, provides for seizure of any economic poison which "is not registered."

Section 7 provides that the bill will become effective on enactment, and makes it clear that all existing registrations under protest will then terminate.

DEPARTMENTAL REPORTS

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 12, 1963.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: We wish to thank you for your letter of May 28, 1963, giving us the opportunity to report on S. 1605, entitled "A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes."

The bill would permit the labels of economic poisons registered under the act to bear the registration numbers and would authorize the Secretary of Agriculture to require by regulation that registration numbers appear on such labels. It would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or canceling registrations, or requiring modification of claims or labeling of registered economic poisons. Provisions would be made for referral of the question of the eligibility of an economic poison for registration to an advisory committee; for public hearing, if requested, with respect to the Secretary's order issued after consideration of the views of the committee and other data; and for judicial review of the order issued by the Secretary after such hearing.

In fulfilling its responsibilities under the act, this Department is hampered by a provision in the act which gives the applicant the right to demand and receive registration under protest when regular registration is denied, even though the denial is based upon a hazard to the public involved in its use. The net effect of a registration under protest is to shift the burden of proof from the applicant to the Department. Thus a chemical formulation not acceptable to the Department for registration might be marketed for an extended period on a "registration under protest" basis before proof of its harmfulness could be developed. The intent of S. 1605 is to eliminate registrations under protest and to give this Department authority to deny or cancel any registration or require modification of claims or labeling in any case, after opportunity for referral of the matter to an advisory committee and a public hearing, but with authority for immediate suspension of any registration when the Secretary of Agriculture finds that such action is necessary to prevent an imminent hazard to the public or any portion thereof.

This Department recommends enactment of the bill if the following changes are made.

In section 3 of the bill, page 3, line 7, after "Secretary.", insert the following new sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory committee." It is believed that this authority in the Secretary is desirable.

In section 3 of the bill, page 3, line 19, preceding the period, insert the following: "all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition". This change

would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

The bill provides that all data submitted to the Secretary or an advisory committee shall be considered confidential until final action is taken concerning registration of the product. However, the bill also provides for such data to be included in the record at the public hearing provided for in the bill. To eliminate this apparent inconsistency, it is suggested that in section 3 of the bill, page 5, lines 20-21, the phrase "final action is taken concerning registration of the product." be deleted and the following be substituted therefor: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him." In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". It is contemplated that under this language the Secretary would be authorized to make such data available to other executive agencies that have an official interest.

Since the provisions of the act for registration under protest would be deleted by the bill, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bill become effective. However, to avoid any possible question in this respect, it is proposed that in section 7 of the bill, page 8, line 16, the following be inserted preceding the period: ", and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate".

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, D.C., August 19, 1963.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR SENATOR ELLENDER: Your committee has requested this Department's report on S. 1605, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

We recommend the enactment of S. 1605, if amended as suggested herein.

This Department, in carrying out its responsibilities of administering our national parks and conserving fish and wildlife, is convinced of the need to provide a more effective means of controlling the use of chemicals potentially harmful to living man, domestic animals, and fish and wildlife. S. 1605 is designed to accomplish this by strengthening the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 et seq.). The bill deletes the provisions of that act permitting registration of economic poisons under protest

and establishes procedures for granting, denying, or canceling the registration or requiring the modification of the claims or the labeling by the applicant for registration.

In addition, S. 1605 establishes procedures for referring the Secretary's determination that registration of an economic poison should be refused, canceled, or the claims or labeling modified, to an advisory committee appointed by the Secretary, if the applicant or registrant requests this. We understand that the Department of Agriculture has suggested that provision also be made for referral to the committee on the Secretary's motion at any time. The committee then reviews the application and all relevant data, and presumably the determination of the Secretary, and makes its report and recommendations to the Secretary. The bill then provides for the Secretary to consider the committee's views and all other data and to make a new determination and issue a new order with a findings of fact. Following this, any aggrieved person may file objections and request and be granted a hearing for the purpose of receiving evidence relevant and material to the issues raised by the objections. After completion of the hearing the Secretary is again required to issue an order, based on the whole record, denying or canceling the registration or requiring a modification of the claims or the labeling. The order of the Secretary would then be subject to judicial review. While this Department does not object to these lengthy procedures, we believe that these procedures may prove to be too cumbersome and work a hardship on all those concerned.

One of the principal concerns of this Department is the effect of pesticides on fish and wildlife. These effects should be considered during the registration of these chemicals. S. 1605 provides an opportunity for a careful consideration of these effects by an advisory committee, in addition to the consideration given by the Department of Agriculture. Each advisory committee shall include experts selected by the National Academy of Sciences and one or more persons from land-grant colleges. Since the bill specifically provides for representatives of these colleges, we believe that a provision for including on such a committee one or more persons familiar with the effects of pesticides on fish and wildlife also is necessary. Accordingly, we recommend that page 3, line 11, of the bill be amended by striking the period after "colleges" and inserting a comma and the following clause: "and one or more biologists familiar with the effects of pesticides on fish and wildlife."

In the alternative, however, we would not object to deleting the provision for including representatives of land-grant colleges and one or more biologists. We believe that the bill is broad enough to permit the National Academy of Sciences to include such representatives when necessary without specifically providing for such representation. Further, there may be occasions where their representation would serve no useful purpose.

Section 3 of the bill, among other things, authorizes the Secretary of Agriculture to order the suspension of the registration of an economic poison immediately, when he finds such action is necessary to prevent an imminent hazard to the public. This would be applicable to economic poisons now registered under the act. Procedures similar to those described for registering pesticides would be applicable to suspended registrations. We believe this provision is essential.

However, we believe that the term "public" may not include fish and wildlife and other natural resources. Accordingly, we recommend that S. 1605 be amended on page 6, line 3, after the word "public," by inserting therein "including an imminent hazard to man, or animals or plants useful to man, including useful fish and wildlife,".

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 29, 1963.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of June 6, 1963, for a report on S. 1605, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

The two objectives of this bill—objectives that we fully endorse—are stated in its title. Under present law, if the Secretary of Agriculture determines that an economic poison offered for registration under the Federal Insecticide, Fungicide, and Rodenticide Act would not comply with the various substantive requirements of the act, he still must, if the applicant insists, register the article though "under protest," even when the apparent violation is one that constitutes a hazard to the public health. Likewise, if an economic poison is regularly registered, the Secretary can convert the registration into a registration "under protest" but cannot cancel it outright. And since the label of the article bears no reference to registration—it is deemed misbranded if it does—purchasers are not apprised of its protested status. The holder of an article registered under protest does incur the risk of greater penalties and automatic termination of the registration in the event of conviction for a violation of the act, but in order to achieve this the Government would first have to carry the burden of proving beyond a reasonable doubt noncompliance with the act's substantive requirements, such as labeling giving adequate directions for use and adequate warnings to prevent injury. The burden should, we think, be on the manufacturer to show, before an economic poison may be registered, that the article may be safely and effectively used under the proposed labeling, so that, on the one hand, an article may be marketed in reliance on the registration so long as it is in effect and the article and its labeling are the same as that which has been registered and, on the other hand, deviation from the registered article or its labeling will per se constitute a violation.

The present bill would—in addition to authorizing the Secretary to require the label of the economic poison to bear a registration number—substitute for the present protest-registration procedure detailed provisions that would authorize the Secretary to refuse registration, or to cancel the registration (or require modification of the labeling), of an

economic poison that he considers to be violative of the act, subject to the applicant's right to have the matter referred to an advisory committee of experts and to have a reconsidered decision of the Secretary after the report of the advisory committee has been obtained, and subject to the right of any person adversely affected by such a reconsidered decision to have an opportunity for public hearing and for judicial review of the Secretary's final decision on the basis of the hearing record. (Pending referral to an advisory committee and hearing, the Secretary would be empowered to suspend registration summarily if found necessary to prevent an imminent hazard to the public.)

These provisions would carry out procedurally two of the recommendations (i.e., recommendations D 1 and 2) in the recent report of the President's Science Advisory Committee on the "Use of Pesticides." We defer to the view of the Secretary of Agriculture as to whether these provisions are adequate, not only to do away with registration under protest but, as above suggested, to put the burden on the applicant to prove compliance with the substantive requirements of the act as to safety and effectiveness before the article may be registered, instead of placing the burden, in the last analysis, on the Secretary to prove that the article does not comply before he may refuse registration. We believe, however, that in any event certain amendments to the bill are needed from the point of view of the impact of the bill on this Department.

1. *Amendments to clarify, extend, and improve the relationship between the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act with respect to economic poisons that may leave a residue in or on food*

The Food, Drug, and Cosmetic (FDC) Act provides, through various regulatory procedures, for premarketing clearance for safety, including establishment of safe tolerances, for extraneous substances in or on food (including feed) that are either intended as components of food or the use of which may reasonably be expected to result in leaving a residue in food. If such a substance is present in or on food at the time of, or subsequent to, introduction of the food in interstate commerce, the food is deemed unsafe, and hence adulterated, unless the use of the additive and the amount involved are sanctioned by a clearance regulation then in effect or are exempted by the act or regulation. Chemicals that are "economic poisons" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) may be subject to one of two of these premarketing clearance procedures under the FDC Act, depending upon whether the chemical is used in the production, storage, or transportation of crops or other raw agricultural commodities—in which event it is referred to as a "pesticide chemical" subject to the clearance procedure of the Pesticide Chemicals Amendment—or is used otherwise, in which event it is, generally, subject to the clearance procedure of the Food Additives Amendment of 1958 as a "food additive" (unless it is classified as a color additive).

In the case of "pesticide chemicals" as above defined, where in the opinion of the Department of Agriculture the proposed use of the chemical in accordance with label directions will leave a residue on a raw agricultural commodity, that Department will ordinarily delay

registration until an applicable tolerance or exemption has been established under the FDC Act, on the ground that until the establishment of such a tolerance or exemption it cannot be determined whether there will be a violation of the provisions of FIFRA, which deem an economic poison misbranded if the labeling does not contain necessary directions for use "adequate for the protection of the public" or if the label does not contain necessary warning or caution statements "adequate to prevent injury to living man and other * * * animals * * *." (See regulations, 7 CFR 363.11.) We understand that extension of this procedure to situations where an economic poison offered for registration is intended for use in connection with food other than raw agricultural commodities is under consideration, though not as yet in effect. However, we assume that, under present law, the applicant could insist upon registration without awaiting a determination by this Department under the FDC Act, though in such cases he might have to accept a registration under protest.

Whatever the basis for the above-mentioned procedure under FIFRA in its present form, with its escape hatch of registration under protest, we seriously doubt that, under the amendments proposed by the bill, the Secretary of Agriculture would be authorized to delay his decision, initially or otherwise, on the ground that there has been no determination under the FDC Act. The provisions of the bill, with their built-in time limits, emphasize the desirability of expeditious procedure. Moreover, even if the Secretary should manage to defer his decision with respect to registration until a tolerance or exemption under the FDC Act has been granted or denied, this would apparently not, as the bill is written, require or authorize him to deny registration simply on the basis of the decision reached under the FDC Act; nor could the Secretary, after registration has been granted, cancel such registration simply on the basis of the decisions reached under the FDC Act, such as a modification of a previously established tolerance. The hearing provisions of the bill, particularly, seem to contemplate an independent administrative decision of the Secretary of Agriculture (subject to judicial review on the record) "based only on substantial evidence of record at such hearing" (including any report of an expert advisory committee appointed under the bill), and the grounds on which the decision would have to be based would be failure to comply with substantive provisions, including those relating to safety, of FIFRA rather than with applicable standards or regulations under the FDC Act. This involves the risk of duplicative, and even dichotomous, decisions of the two departments contrary to their mutual desire and contrary to the public interest.

The bill is therefore in need of amendment to prevent these results and to formalize in law, perfect, and extend to all foods the now-existing procedure applied under FIFRA with respect to economic poisons used in connection with raw agricultural commodities. This could be accomplished by amendments as follows:

(a) A requirement that an application for registration of an economic poison be accompanied by a satisfactory method of analysis which could be used to determine the presence or absence of residues in food, if the economic poison is intended for use in the production, handling, transportation, or storage of food, or for some other use that may reasonably be expected to result in leaving a residue in food when used as directed or under reasonably foreseeable conditions of

use. Such an analytical method is needed both to determine whether the article should be registered on a "no residue" basis and, after such registration, whether its use bears out the expectation of "no residue."

(b) In the case of an economic poison which is intended for a use described in the preceding paragraph, a requirement that the application for registration be accompanied by full reports of adequate scientific investigations as to the amount of residues remaining in or on food.

(c) A requirement that an economic poison may not be registered unless and until this Department has certified a finding either (1) that there is no reasonable likelihood that the article will result in a residue in or on food (at or after the introduction of the food into interstate commerce), or (2) that the residue likely to result will not be deemed unsafe under the FDC Act (because of a tolerance or exemption we have established, or because of other facts stated in the certification). Provision should also be made for mandatory cancellation of the registration upon certification by this Department that the earlier findings are no longer applicable by reason of change in the tolerance or exemption previously established or of other action under the FDC Act, or by reason of actual experience as to the residues which result from the use of the economic poison.

(d) The standard to be applied in determining whether a chemical should be registered is the amount of residue, if any, in or on food, that is likely to result if the chemical is used in accordance with directions or otherwise under reasonably foreseeable conditions of use. The standard to be applied in determining whether registration should be canceled is the amount of residue that is resulting from actual use of the chemical, either as directed, or under other conditions of actual use that may reasonably be expected to be followed in practice to a substantial extent.

We are enclosing draft language to carry out these recommendations.

2. *Amendments to make information available to other agencies concerned*

We believe that the confidentiality provisions of the bill in section 3 could be a bar to proper administration, and we therefore not only endorse the recommendation in the Secretary of Agriculture's comments dealing with the proposed amendments of lines 20 and 21 on page 5 of the bill, but also recommend that the law make a specific provision, along the lines of an amendment enclosed herewith, to make it clear that the Secretary of Agriculture is not barred from providing information submitted to him to any other Federal agency consulted.

Before closing this report, we should like to note that the President has asked the responsible agencies to implement the recommendations in the Science Advisory Committee's report, including in such implementation the preparation of proposals for submission by him to Congress.

With respect to economic poisons that leave no residue in or on food but have other implications with respect to public health, we are currently engaged in evaluating the statement in the report of that committee that "decisions on registration, clearly related to health, should be the responsibility of the Department of Health, Education, and Welfare," and the committee's recommendation B. 4, that the "Secretaries of Agriculture, Interior, and Health, Education, and

Welfare review and define their roles in the registration of pesticides that are not present on food, but that may impinge on fish and wildlife or come into intimate contact with the public." Additional proposals for the amendment of FIFRA could eventuate in the light of these committee recommendations. We also intend to review the need for special controls over especially hazardous persistent economic poisons, whether used in connection with food or otherwise, and the question whether the availability of a new and less hazardous substance should be ground for changing the status of a previously registered article.

At this time, we recommend, for the above-stated reasons, the enactment of this bill, modified in accordance with the proposed amendments enclosed herewith which would carry out the specific recommendations of our report.

We are advised by the Bureau of the Budget that while there is no objection to the submission of this report from the standpoint of the Administration's program, the matter of relationships between the food and drug and pesticide registration programs is still under study in the executive branch and a final decision will be reached thereon as soon as possible.

Sincerely,

PHILIP H. DES MARAIS,
Acting Assistant Secretary.

PROPOSED AMENDMENTS TO THE BILL RE ECONOMIC POISONS
LEAVING RESIDUES IN OR ON FOOD

1. On page 6, change lines 15 and 16 to read as follows: "tions d and ea ssubsections f and g, and by inserting before such redesignated subsections the following news ubsections, as follows:."

2. On page 6, line 18, insert "subsection c of" after "under."

3. Strike out the closing quotation marks on page 8, line 6, and insert between lines 6 and 7 the following:

"e. (1) The provisions of this subsection shall apply notwithstanding any other provisions of this Act.

"(2) For the purposes of this section, the registration of an economic poison shall not be valid with respect to any change from the claims therefor or the labeling or composition thereof as described in the application upon which such registration is based, except upon the filing of a supplement to such application in accordance with such change and issuance of an order confirming such registration: *Provided*, That no such supplement need be filed with respect to a change that is not significant from the standpoint of safety or effectiveness or from the standpoint of the residue of the economic poison remaining in or on food. As used in the following paragraphs of this subsection, the term 'application for registration' includes a proposed supplement to an application on which a previous registration is based and a request pursuant to subsection g for continuation of a registration, and the terms 'register' and 'registration' include confirmation or continuation of registration pursuant to such a supplement or pursuant to such a request.

"(3) A copy of every application for registration of an economic poison, and of any statement or other data filed in connection therewith, shall be transmitted by the Secretary to the Secretary of Health, Education, and Welfare, together with an opinion of the Secretary of Agriculture as to whether, on the basis of the data before him, such economic poison, when used as directed or otherwise under reasonably foreseeable conditions of use, is likely to result in a residue in or on food and, if so, the amount of such residue.

"(4) (A) An economic poison shall not be registered unless and until the Secretary of Health, Education, and Welfare has certified, on the basis of the data before him and after appropriate consideration of the opinion of the Secretary of Agriculture submitted under paragraph (3), that he finds (i) that such economic poison, when used in accordance with directions or otherwise under reasonably foreseeable conditions of use, is not likely to result in a residue in or on food (at or after the introduction thereof into interstate commerce), or (ii) that the residue likely to result from such use will, by reason of its conformance with a tolerance or exemption established under the Federal Food, Drug, and Cosmetic Act or by reason of any other facts found and stated in such certification, not be deemed unsafe within the meaning of section 406, 408, 409, or 706 of such Act.

"(B) Such certification shall in any event be refused unless the application and other data submitted to the Secretary of Health, Education, and Welfare under paragraph (3) or submitted to him directly by the applicant include the following:

"(i) Full data showing the chemical identity and composition of the economic poison.

"(ii) Practicable and reliable methods of examination for determining the amount of residue, if any, of such economic poison in or on food if such economic poison is intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, or is intended for any use that may reasonably be expected to result, directly or indirectly, in its leaving a residue in or on food when used as directed or otherwise under reasonably foreseeable conditions of use.

"(iii) Full reports of adequate investigations (made in accordance with the methods referred to in clause (ii)) showing the amount of such residue, if any, remaining in or on food when such economic poison is used as directed or otherwise under reasonably foreseeable conditions of use, except that such investigations, if not made, may be dispensed with by such Secretary if such economic poison is not intended for a use described in clause (ii).

"(5) Whenever the Secretary of Health, Education, and Welfare certifies that he finds (A) that, by reason of action (specified in such certification) taken under section 406, 408, 409, or 706 of the Federal Food, Drug, and Cosmetic Act,

as the case may be, the probable residue of an economic poison in or on food assumed as a basis for a prior registration of an economic poison would now be deemed unsafe within the meaning of such section, or (B) that the actual use of such economic poison as directed, or under other conditions of actual use that may reasonably be expected to continue to be followed in practice to a substantial extent, has resulted in leaving in or on food, at or after the introduction thereof in interstate commerce, a residue that for reasons stated in such certification is deemed unsafe within the meaning of any such section of such Act, the Secretary of Agriculture shall cancel such registration on thirty days' notice, except that, if the order of certification of the Secretary of Health, Education, and Welfare includes a finding of imminent hazard to the public health pursuant to clause (C) of the proviso to paragraph (6) of this subsection, such registration shall be suspended without prior notice pending final action of such Secretary.

(6) Certifications, or refusals of certification, of the Secretary of Health, Education, and Welfare under this subsection shall be made by order. The procedure for the issuance, amendment, or revocation of such orders, including opportunity for hearing on the record to any person adversely affected by the Secretary's action or proposed action, shall be prescribed by such Secretary by regulations and shall follow as nearly as practicable the procedure governing orders of the Secretary of Agriculture set forth in subsection c: *Provided*, That (A) the question whether or on what terms a tolerance, or exemption from the requirement of a tolerance, should be established, modified, or revoked under any provision of the Federal Food, Drug, and Cosmetic Act shall not be put in issue in any proceeding under this section; (B) the referral of a matter to an advisory committee shall not be mandatory on the Secretary of Health, Education, and Welfare unless requested by the applicant or registrant; and (C) where such Secretary finds that there is an imminent hazard to the public health he may immediately make the certification provided for in paragraph (5), in which event he shall give prompt notice to the registrant and afford him the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this paragraph (6) and shall, after such opportunity, issue a final order confirming, modifying, or setting aside his earlier order. Final orders under this paragraph shall be subject to judicial review on the record in accordance with the procedure set forth in subsection d of this subsection, and for that purpose the term "Secretary" as used in subsection d shall mean the Secretary of Health, Education, and Welfare. Notwithstanding the foregoing provisions of this paragraph, the two Secretaries may, to the extent they deem it practicable and in the interest of efficiency and convenience of the parties, provide by joint or parallel regulations for joint hearings before them, in which event judicial review of such orders may be initiated by a single petition.

“(7) As used in this subsection, the term ‘residue’ includes the breakdown products of an economic poison in foods; and the term ‘food’ means such term as defined in the Federal Food, Drug, and Cosmetic Act.”

4. Change the two sentences beginning on page 5, line 16, to read as follows: “All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary, by any other Federal agency officially consulted by the Secretary in connection therewith, and by such advisory committee until the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him. Until such action such data shall not be revealed to any person other than those authorized by the Secretary, or by an advisory committee in the carrying out of the official duties under this section, or by the head of such other Federal agency.”

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

AN ACT To regulate the marketing of economic poisons and devices, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the “Federal Insecticide, Fungicide, and Rodenticide Act.”

DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term “economic poison” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

b. The term “device” means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pest as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

h. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

i. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

j. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

k. The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies, covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

l. The term "weed" means any plant which grows where not wanted.

m. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

n. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

o. The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall

apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);
and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

p. The term "active ingredient" means—

(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

q. The term "inert ingredient" means an ingredient which is not active.

r. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

s. The term "person" means any individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

t. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

u. The term "Secretary" means the Secretary of Agriculture.

v. The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

w. The term "label" means the written, printed, or graphic matter, on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

x. The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons.

y. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

z. The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this Act *other than the registration number assigned to the economic poison*;

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use or;

(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided*, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

PROHIBITED ACTS

SEC. 3. a. It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, and of the following:

(1) Any economic poison which [has not been] *is not* registered pursuant to the provisions of section 4 of this Act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided*, That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand or trade-mark under which said article is sold; [and]

(c) the net weight or measure of the content: *Provided*, That the Secretary may permit reasonable variations[.]; and

(d), *when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.*

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 6 of this Act, unless the label shall bear, in addition to any other matter required by this Act—

(a) the skull and crossbones;

(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc narsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored: *Provided*, That the Secretary may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring

or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded or any device which is misbranded.

b. Notwithstanding any other provision of this Act, no article shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

c. It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Act or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this Act;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this Act;

(3) for any person to give a guaranty or undertaking provided for in section 7 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 7 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

(4) for any person to use for his own advantage or to reveal, other than to the Secretary, or officials or employees of the United States Department of Agriculture, or other Federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Secretary may prescribe, any information relative to formulas of products acquired by authority of section 4 of this Act.

REGISTRATION

SEC. 4 a. Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the [registrant] *applicant for registration* shall file with the Secretary a statement including—

(1) the name and address of the [registrant] *applicant for registration* and the name and address of the person whose name

will appear on the label, if other than the [registrant] *applicant for registration*;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

(4) if requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based.

b. The Secretary, whenever he deems it necessary for the effective administration of this Act, may require the submission of the complete formula of the economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this Act, he shall register it.

c. If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Act, he shall notify the [registrant] *applicant for registration* of the manner in which the article, labeling, or other material required to be submitted fail to comply with the Act so as to afford the [registrant] *applicant for registration* an opportunity to make the corrections necessary. [If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that it be registered, the Secretary shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of this Act. In order to protect the public, the Secretary, on his own motion, may at any time, cancel the registration of an economic poison and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 3 of this Act.] *If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. The Secretary, on his own motion, may at any time refer such a matter to an advisory committee. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional back-*

ground selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: Provided, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for regis-

tration under this section, the Secretary may consult with any other Federal agency. Notwithstanding the provisions of section 3(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act.

d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

[d.] e. Notwithstanding any other provision of this Act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this Act.

[c.]f. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect.

BOOKS AND RECORDS

SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

ENFORCEMENT

SEC. 6 a. The Secretary (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of this Act, including the collection and examination of samples of economic poisons and devices subject to this Act and the determination and establishment of suitable names to be used in the ingredient statement. The Secretary is in addition, authorized after opportunity for hearing—

(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 3a (4) of this Act.

b. The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe the regulations for the enforcement of section 10 of this Act.

c. The examination of economic poisons or devices shall be made in the United States Department of Agriculture or elsewhere as the Secretary may designate for the purpose of determining from such examination whether they comply with the requirements of this Act, and if it shall appear from any such examination that they fail to comply with the requirements of this Act, the Secretary shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an oppor-

tunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Secretary it appears that the provisions of this Act have been violated by such person, then the Secretary shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided*, That nothing in this Act shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

e. The Secretary shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

EXEMPTIONS

Sec. 7 a. The penalties provided for a violation of section 3a of this Act shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, designating this Act. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Secretary shall permit such person to copy all records showing the transactions in and movement of the articles;

(3) to public officials while engaged in the performance of their official duties;

(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary.

PENALTIES

SEC. 8. a. Any person violating section 3a(1) of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000.

b. Any person violating any provision other than section 3a(1) of this Act shall be guilty of a misdemeanor and shall upon conviction be fined not more than \$500 for the first offense, and on conviction for each subsequent offense be fined not more than \$1,000 or imprisoned for not more than one year, or both such fine and imprisonment: *Pro-*

vided, That an offense committed more than five years after the last previous conviction shall be considered a first offense【: *And provided further*, That in any case where a registrant was issued a warning by the Secretary pursuant to the provisions of section 4c of this Act, he shall in each instance upon conviction for an offense concerning which he had been so warned be fined not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically】. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this Act.

c. Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 4 of this Act, he shall be fined not more than \$10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

d. When construing and enforcing the provisions of this Act, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SEIZURES

SEC. 9 a. Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

(1) in the case of an economic poison—

(a) if it is adulterated or misbranded;

(b) if it 【has not been】 *is not* registered pursuant to the provisions of section 4 of this Act;

(c) if it fails to bear on its label the information required by this Act; or

(d) if it is a white powder, economic poison, and is not colored as required under this Act; or

(2) in the case of a device if it is misbranded.

b. If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of this Act or of the laws of the jurisdiction in which it is sold: *Provided*, That upon the payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any

issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

c. When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

IMPORTS

SEC. 10. The Secretary of the Treasury shall notify the Secretary of Agriculture of the arrival of economic poisons and devices offered for importation and shall deliver to the Secretary of Agriculture, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission of delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

DELEGATION OF DUTIES

SEC. 11. All authority vested in the Secretary by virtue of the provisions of this Act may with like force and effect be executed by such employees of the United States Department of Agriculture as the Secretary may designate for the purpose.

AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES

SEC. 12 a. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act. In order to carry out the provisions of this Act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such Act are authorized to be made available.

b. The Secretary is authorized from the funds appropriated for this Act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this Act.

COOPERATION

SEC. 13. The Secretary is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

SEPARABILITY

SEC. 14. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 15.—All provisions of this Act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", shall take effect upon enactment, and sections 3, 8, 9, and 10 of this Act shall take effect as follows: (1) As to devices, upon enactment; (2) as to rodenticides and herbicides, six months after enactment; and (3) as to insecticides, fungicides, and all other economic poisons, one year after enactment; *Provided*, That the Secretary, upon application, may at any time within one year after sections 3, 8, 9, and 10 of this Act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardships, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this Act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this Act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provisions of the Insecticide Act of 1910.

SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U.S.C. 121-134), is hereby repealed one year after the date of the enactment of this Act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments, or deliveries of insecticides and fungicides exempted by the Secretary under section 15.

S. 1605

[Report No. 573]

IN THE SENATE OF THE UNITED STATES

MAY 27, 1963

Mr. RIBICOFF (for himself, Mr. PEARSON, Mr. PELL, and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committee on Agriculture and Forestry

OCTOBER 21 (legislative day, OCTOBER 15), 1963

Reported by Mr. JORDAN of North Carolina, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section ~~2.2(2)(b)~~ of the Federal Insecticide, Fungi-
4 cide, and Rodenticide Act (61 Stat. 163, as amended, 7
5 U.S.C. 1958 ed., Supp. III, 135(z)(2)(b)) is hereby
6 amended by inserting before the semicolon at the end there-
7 of the following phrase: "other than the registration num-
8 ber assigned to the economic poison".

9 SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C.

1 135a) is hereby amended by deleting the word "and" at
 2 the end of section 3.a.(2)(b); changing the period at the
 3 end of section 3.a.(2)(c) to a semicolon, and adding after
 4 section 3.a.(2)(c), a new provision reading as follows:
 5 "and (d), when required by regulation of the Secretary
 6 to effectuate the purposes of this Act, the registration num-
 7 ber assigned to the article under this Act".

8 SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
 9 135b) is hereby amended by changing the word "registrant"
 10 whoever it appears in subsection a. and in the first sentence
 11 of subsection e. to "applicant for registration" and by delet-
 12 ing the remainder of subsection e. and inserting in lieu thereof
 13 the following:

14 "If, upon receipt of such notice, the applicant for regis-
 15 tration does not make the corrections, the Secretary shall
 16 refuse to register the article. The Secretary, in accordance
 17 with the procedures specified herein, may require the modi-
 18 fication of the claims or labeling of, or cancel the registration
 19 of, an economic poison whenever it does not appear that the
 20 article or its labeling or other material required to be sub-
 21 mitted complies with the provisions of this Act. Whenever
 22 the Secretary determines that registration of an economic
 23 poison should be refused, or that an economic poison that is
 24 registered does not appear to warrant the claims made for it

1 or that the article or its labeling or other material required
2 to be submitted does not comply with the provisions of this
3 Act, he shall notify the applicant for registration or the
4 registrant of his determination and the reasons therefor.
5 Within thirty days after service of such notice, the applicant
6 for registration or the registrant may file a petition requesting
7 that the matter be referred to an advisory committee to be
8 appointed by the Secretary. Each such advisory committee
9 shall be composed of experts, qualified in the subject matter
10 and of adequately diversified professional background selected
11 by the National Academy of Sciences and shall include one
12 or more representatives from land-grant colleges. The size
13 of the committee shall be determined by the Secretary.
14 Members of an advisory committee shall receive as compen-
15 sation for their services a reasonable per diem, which the
16 Secretary shall by rules and regulations prescribe, for time
17 actually spent in the work of the committee, and shall in
18 addition be reimbursed for their necessary traveling and
19 subsistence expenses while so serving away from their places
20 of residence. The members shall not be subject to any other
21 provisions of law regarding the appointment and compensa-
22 tion of employees of the United States. The Secretary shall
23 furnish the committee with adequate clerical and other assist-
24 ance, and shall by rules and regulations prescribe the proce-

1 dures to be followed by the committee. The Secretary shall
2 forthwith submit to such committee the application for
3 registration in the article and all relevant data before him.
4 The petitioner, as well as representatives of the United States
5 Department of Agriculture, shall have the right to consult
6 with the advisory committee. As soon as practicable after
7 any such submission, but not later than sixty days thereafter,
8 unless extended by the Secretary for an additional sixty days,
9 the committee shall, after independent study of the data sub-
10 mitted by the Secretary and all other pertinent information
11 available to it, make a report and recommendation to the
12 Secretary as to the registration of the article. After due
13 consideration of the views of the committee and all other
14 data before him, the Secretary shall make his determination
15 and issue an order, with findings of fact, with respect to
16 registration of the article and notify the applicant for regis-
17 tration or registrant. Any person adversely affected thereby
18 may file objections thereto and request a public hearing
19 thereon. In the event a hearing is requested, the Secretary
20 shall, after due notice, hold such public hearing for the pur-
21 pose of receiving evidence relevant and material to the
22 issues raised by such objections. Any report, recommenda-
23 tions, underlying data, and reasons certified to the Secretary
24 by an advisory committee shall be made a part of the record
25 of the hearing, if relevant and material, subject to the pro-

visions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objection and issue an order granting, denying, or canceling the registration or requiring the modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendation, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until final action is taken concerning registration of the product. Until such final action such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section. Notwithstanding

1 any other provision of this section, the Secretary may, when
2 he finds that such action is necessary to prevent an imminent
3 hazard to the public, by order, suspend the registration of
4 an economic poison immediately. In such case, he shall give
5 the registrant prompt notice of such action and afford the
6 registrant the opportunity to have the matter submitted to
7 an advisory committee and for an expedited hearing under
8 this section. Final orders of the Secretary under this section
9 shall be subject to judicial review, in accordance with the
10 provisions of subsection d. In no event shall registration of
11 an article be construed as a defense for the commission of
12 any offense prohibited under section 3 of this Act."

13 SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
14 135b) is hereby further amended by redesignating subsec-
15 tions d. and e. as subsections e. and f., and by adding a new
16 subsection d., as follows:

17 "d. In a case of actual controversy as to the validity
18 of any order under this section, any person who will be
19 adversely affected by such order may obtain judicial review
20 by filing in the United States court of appeals for the cir-
21 cuit wherein such person resides or has his principal place
22 of business, or in the United States Court of Appeals for the
23 District of Columbia Circuit, within sixty days after the
24 entry of such order, a petition praying that the order be
25 set aside in whole or in part. A copy of the petition shall

1 be forthwith transmitted by the clerk of the court to the
2 Secretary, or any officer designated by him for that purpose;
3 and thereupon the Secretary shall file in the court the rec-
4 ord of the proceedings on which he based his order, as pro-
5 vided in section 2112 of title 28, United States Code. Upon
6 the filing of such petition, the court shall have exclusive
7 jurisdiction to affirm or set aside the order complained of
8 in whole or in part. The findings of the Secretary with
9 respect to questions of fact shall be sustained if supported
10 by substantial evidence when considered on the record as
11 a whole, including any report and recommendation of an
12 advisory committee. If application is made to the court
13 for leave to adduce additional evidence, the court may order
14 such additional evidence to be taken before the Secretary,
15 and to be adduced upon the hearing in such manner and
16 upon such terms and conditions as to the court may seem
17 proper, if such evidence is material and there were reason-
18 able grounds for failure to adduce such evidence in the
19 proceedings below. The Secretary may modify his find-
20 ings as to the facts and order by reason of the additional
21 evidence so taken, and shall file with the court such modi-
22 fied findings and order. The judgment of the court affirming
23 or setting aside, in whole or in part, any order under this
24 section shall be final, subject to review by the Supreme
25 Court of the United States upon certiorari or certification

1 as provided in section 1254 of title 48 of the United States
 2 Code. The commencement of proceedings under this sec-
 3 tion shall not, unless specifically ordered by the court to
 4 the contrary, operate as a stay of an order.— The court shall
 5 advance on the docket and expedite the disposition of all
 6 causes filed therein pursuant to this section.”

7 SEC. 5. Subsection 8.b. of said Act (61 Stat. 170; 7
 8 U.S.C. 135f. (b)) is hereby amended by deleting the second
 9 proviso therein.

10 SEC. 6. Subsection 3.a.(1) and subsection 9.a.(1)(b)
 11 of said Act (61 Stat. 166; 170; 7 U.S.C. 135a.(a)(1);
 12 135g.(a)(1)(b)) are hereby amended by changing the
 13 phrase “has not been registered” wherever it appears therein,
 14 to read “is not registered.”

15 SEC. 7. This Act and the amendments made hereby
 16 shall become effective upon enactment.

17 *That section 2.z.(2)(b) of the Federal Insecticide, Fungi-*
 18 *cide, and Rodenticide Act (61 Stat. 163, as amended, 7*
 19 *U.S.C., 1958 ed., Supp. III, 135(z)(2)(b)) is hereby*
 20 *amended by inserting before the semicolon at the end there-*
 21 *of the following phrase: “other than the registration num-*
 22 *ber assigned to the economic poison”.*

23 SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C.
 24 135a) is hereby amended by deleting the word “and” at
 25 the end of section 3.a.(2)(b), deleting the period at the end

1 of section 3.a.(2) (c) and inserting in lieu thereof a semi-
2 colon and the word “and”, and adding after section 3.a.(2)
3 (c), a new provision reading as follows: “(d), when required
4 by regulation of the Secretary to effectuate the purposes of this
5 Act, the registration number assigned to the article under this
6 Act.”.

7 SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
8 135b) is hereby amended by changing the word “registrant”
9 wherever it appears in subsection a. and in the first sentence
10 of subsection c. to “applicant for registration” and by delet-
11 ing the remainder of subsection c. and inserting in lieu thereof
12 the following:

13 “If, upon receipt of such notice, the applicant for regis-
14 tration does not make the corrections, the Secretary shall
15 refuse to register the article. The Secretary, in accordance
16 with the procedures specified herein, may suspend or cancel
17 the registration of an economic poison whenever it does not
18 appear that the article or its labeling or other material re-
19 quired to be submitted complies with the provisions of this
20 Act. Whenever the Secretary refuses registration of an
21 economic poison or determines that registration of an eco-
22 nomic poison should be canceled, he shall notify the applicant
23 for registration or the registrant of his action and the reasons
24 therefor. Whenever an application for registration is re-

1 *fused, the applicant, within thirty days after service of notice*
2 *of such refusal, may file a petition requesting that the matter*
3 *be referred to an advisory committee or file objections and*
4 *request a public hearing in accordance with this section. A*
5 *cancellation of registration shall be effective thirty days*
6 *after service of the foregoing notice unless within such time*
7 *the registrant (1) makes the necessary corrections; (2) files*
8 *a petition requesting that the matter be referred to an ad-*
9 *visory committee; or (3) files objections and requests a public*
10 *hearing. The Secretary, on his own motion, may at any*
11 *time refer such a matter to an advisory committee. Each*
12 *advisory committee shall be composed of experts, qualified*
13 *in the subject matter and of adequately diversified profes-*
14 *sional background selected by the National Academy of*
15 *Sciences and shall include one or more representatives from*
16 *land-grant colleges. The size of the committee shall be deter-*
17 *mined by the Secretary. Members of an advisory committee*
18 *shall receive as compensation for their services a reasonable*
19 *per diem, which the Secretary shall by rules and regulations*
20 *prescribe, for time actually spent in the work of the committee,*
21 *and shall in addition be reimbursed for their necessary travel-*
22 *ing and subsistence expenses while so serving away from their*
23 *places of residence, all of which costs may be assessed against*
24 *the petitioner, unless the matter was referred to the advisory*
25 *committee upon the motion of the Secretary without a peti-*

1 tion. The members shall not be subject to any other pro-
2 visions of law regarding the appointment and compensa-
3 tion of employees of the United States. The Secretary shall
4 furnish the committee with adequate clerical and other assist-
5 ance, and shall by rules and regulations prescribe the proce-
6 dures to be followed by the committee. The Secretary shall
7 forthwith submit to such committee the application for reg-
8 istration of the article and all relevant data before him.
9 The petitioner, as well as representatives of the United States
10 Department of Agriculture, shall have the right to consult
11 with the advisory committee. As soon as practicable after
12 any such submission, but not later than sixty days thereafter,
13 unless extended by the Secretary for an additional sixty days,
14 the committee shall, after independent study of the data sub-
15 mitted by the Secretary and all other pertinent information
16 available to it, submit a report and recommendation to the
17 Secretary as to the registration of the article, together with
18 all underlying data and a statement of the reasons or basis
19 for the recommendations. After due consideration of the
20 views of the committee and all other data before him, the
21 Secretary shall, within ninety days after receipt of the report
22 and recommendations of the advisory committee, make his
23 determination and issue an order, with findings of fact, with
24 respect to registration of the article and notify the applicant
25 for registration or registrant. The applicant for registra-

tion, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: Provided, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or cancelling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certi-

1 *fied to the Secretary by an advisory committee, and shall set*
2 *forth detailed findings of fact upon which the order is based.*
3 *In connection with consideration of any registration or*
4 *application for registration under this section, the Secretary*
5 *may consult with any other Federal agency. Notwithstand-*
6 *ing the provisions of section 3.c.(4), information relative to*
7 *formulas of products acquired by authority of this section*
8 *may be revealed, when necessary under this section, to an*
9 *advisory committee, or to any Federal agency consulted, or*
10 *at a public hearing, or in findings of fact issued by the*
11 *Secretary. Notwithstanding any other provision of this sec-*
12 *tion, the Secretary may, when he finds that such action is*
13 *necessary to prevent an imminent hazard to the public, by*
14 *order, suspend the registration of an economic poison im-*
15 *mediately. In such case, he shall give the registrant prompt*
16 *notice of such action and afford the registrant the*
17 *opportunity to have the matter submitted to an advisory*
18 *committee and for an expedited hearing under this section.*
19 *Final orders of the Secretary under this section shall be*
20 *subject to judicial review, in accordance with the provisions*
21 *of subsection d. In no event shall registration of an article*
22 *be construed as a defense for the commission of any offense*
23 *prohibited under section 3 of this Act."*

24 *SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C.*

1 135b) is hereby further amended by redesignating subsec-
2 tions d. and e. as subsections e. and f., and by adding a new
3 subsection d., as follows:

4 “d. In a case of actual controversy as to the validity
5 of any order under this section, any person who will be
6 adversely affected by such order may obtain judicial review
7 by filing in the United States court of appeals for the cir-
8 cuit wherein such person resides or has his principal place
9 of business, or in the United States Court of Appeals for the
10 District of Columbia Circuit, within sixty days after the
11 entry of such order, a petition praying that the order be
12 set aside in whole or in part. A copy of the petition shall
13 be forthwith transmitted by the clerk of the court to the
14 Secretary, or any officer designated by him for that purpose,
15 and thereupon the Secretary shall file in the court the rec-
16 ord of the proceedings on which he based his order, as pro-
17 vided in section 2112 of title 28, United States Code. Upon
18 the filing of such petition, the court shall have exclusive
19 jurisdiction to affirm or set aside the order complained of
20 in whole or in part. The findings of the Secretary with
21 respect to questions of fact shall be sustained if supported
22 by substantial evidence when considered on the record as a
23 whole, including any report and recommendation of an ad-
24 visory committee. If application is made to the court for
25 leave to adduce additional evidence, the court may order such

1 additional evidence to be taken before the Secretary, and to be
2 adduced upon the hearing in such manner and upon such
3 terms and conditions as to the court may seem proper, if such
4 evidence is material and there were reasonable grounds for
5 failure to adduce such evidence in the proceedings below.
6 The Secretary may modify his findings as to the facts and
7 order by reason of the additional evidence so taken, and shall
8 file with the court such modified findings and order. The
9 judgment of the court affirming or setting aside, in whole or
10 in part, any order under this section shall be final, subject to
11 review by the Supreme Court of the United States upon
12 certiorari or certification as provided in section 1254 of
13 title 18 of the United States Code. The commencement of
14 proceedings under this section shall not, unless specifically
15 ordered by the court to the contrary, operate as a stay of an
16 order. The court shall advance on the docket and expedite
17 the disposition of all causes filed therein pursuant to this
18 section.”

19 SEC. 5. The first sentence of section 8.b. of said Act (61
20 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by delet-
21 ing that part beginning with the second proviso therein down
22 to, but not including, the period at the end thereof.

23 SEC. 6. Section 3.a.(1) and section 9.a.(1)(b) of
24 said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1),
25 135g.(a)(1)(b)) are hereby amended by changing the phrase

1 “has not been registered” wherever it appears therein, to
2 read “is not registered.”

3 SEC. 7. This Act and the amendments made hereby
4 shall become effective upon enactment, and all existing regis-
5 trations under protest issued under said Federal Insecticide,
6 Fungicide, and Rodenticide Act shall thereupon terminate.

Calendar No. 551

88TH CONGRESS
1ST SESSION

S. 1605

[Report No. 573]

A BILL

To amend the Federal Insecticide, Fungicide,
and Rodenticide Act, as amended, to provide
for labeling of economic poisons with regis-
tration numbers, to eliminate registration
under protest, and for other purposes.

By Mr. RUBIOFF, Mr. PEARSON, Mr. PELL, and
Mr. JAVITS

MAY 27, 1963

Read twice and referred to the Committee on
Agriculture and Forestry

OCTOBER 21 (legislative day, OCTOBER 15), 1963

Reported with an amendment

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Oct. 23, 1963
For actions of Oct. 22, 1963
88th-1st; No. 169



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HIGHLIGHTS: Senate passed bills to: Prohibit registration of pesticides under protest; establish Ozark National Rivers recreation area. Senate committee reported foreign aid authorization bill. Sen. Proxmire inserted Berle article opposing increased foreign trade with Russia. Sen. Saltonstall criticized increased wool imports. House committee voted to report bill to implement International Coffee Agreement.

SENATE

1. PESTICIDES. Passed as reported S. 1605, to amend the Federal Insecticide, Fungicide, and Rodenticide Act so as to provide for labeling of economic poisons with registration numbers to eliminate registration under protest. pp. 19080-3
2. FOREIGN AID. The Foreign Relations Committee reported with amendment H. R. 7885, the foreign aid authorization bill (S. Rept. 588). p. 19028
Sen. Gruening submitted amendments intended to be proposed to the bill. p. 19028
3. RECREATION. Passed as reported S. 16, to provide for the establishment of the Ozark National Rivers, Mo., recreation area which would include certain national forest lands. pp. 19075-8
4. MILITARY CONSTRUCTION. Passed as reported H. R. 6500, to authorize construction at military installations. Conferees were appointed. pp. 19046-53, 19084-95

5. WATER RESOURCES. Passed as reported S. J. Res. 49, to authorize Interior to carry out a program for control of phreatophytes along the Pecos River channel, N. Mex. and Tex. pp. 19099-100

Sen. Burdick inserted an editorial and article commending the Bureau of Reclamation for water resource development work in N. Dak. and throughout the U. S. pp. 19035-6

6. FOREIGN TRADE. Sen. Saltonstall expressed concern over the economic effects of increased imports on domestic industries, particularly the wool industry, and urged that these economic factors be taken into consideration by our representatives in future trade negotiations. pp. 19056-9

Sen. Javits stated that the President has notified American industry that almost the entire U. S. tariff list would be subject to major reductions in the forthcoming GATT negotiations, and he inserted several articles discussing the negotiations. pp. 19034-5

Sen. Lausche stated that he was "apprehensive about the purpose and possible results of the Soviet-proposed United Nations International Trade Conference, which is scheduled to meet in Geneva early next year," and raised several questions he felt should be explored before such a conference is held. p. 19030

7. DAIRY IMPORTS. Sen. Proxmire inserted a newsletter stating that Secretary Freeman has announced that several dairy exporting nations have agreed to a temporary limit on dairy shipments to the U. S., and that if these arrangements do not hold imports to the indicated levels, action will be initiated under Sec. 22 of the Agricultural Adjustment Act for more effective controls. p. 19061

8. WHEAT; FOREIGN TRADE. Sen. Proxmire inserted an article by A. A. Berle, Jr., stating that while he thought the "wheat deal justifiable" with Russia, he was opposed to expanded trade with Russia, and raising a question as to whether or not enlarged trade would "merely give the Soviet Union more resources to fight our friends and ourselves." pp. 19066-8

9. LANDS. The Interior and Insular Affairs Committee reported with amendments H. R. 2073, to place certain submerged lands within the jurisdiction of the governments of Guam, the Virgin Islands, and American Samoa (S. Rept. 589). p. 19028

10. TRANSPORTATION. Sen. Mansfield urged that boxcars owned by western railroads, and now being used by eastern railroads, be returned immediately so that they would be available for shipment of agricultural commodities. p. 19030

11. ELECTRIFICATION. Sen. Metcalf commended the installation of electric power facilities in the Yaak Valley, Mont., and inserted an article, "What Low-Cost Power Means to Western Montana." pp. 19037-9

12. FOREIGN AGRICULTURE. Sen. McGee inserted an article reviewing failures in the Communist world, including references to agriculture. pp. 19041-2

Sen. Curtis inserted an address by the Chinese Ambassador to the United States discussing relations between Russia and Communist China, including a comparison of agricultural policies in the two countries. pp. 19064-6

13. PERSONNEL; PAY. Sen. Lausche expressed his opposition to proposed Federal pay increases. pp. 19030-1

14. WILDLIFE. Sen. Yarborough urged that the U. S. take the lead in convening an International Conference to initiate cooperative action furthering worldwide wildlife conservation. pp. 19042-4

applicable to Canada, and may be applicable to Japan.

The burden of the Secretary's testimony yesterday was that the mere threat to impose the tax—which, would be effective as of the date of the balance-of-payments message which the President sent to the Congress; namely, July 18 of this year—has been already sufficient to stop a material amount of foreign capital financing in the United States and the purchase of foreign capital issues by Americans. He says, that we have obtained some benefit, in terms of our balance-of-payments, as a result of a mere threat that the tax maybe enacted and comes out very strongly, in his testimony, for the passage of the bill, and against the proposition which I, myself, have developed before the Senate on September 3—that a capital issues committee be appointed in New York, the principal securities market of the Nation, for the purpose of advising—not having plenary power, but advising—the Government on the question of specific borrowings or flotations in this country by foreigners.

As I thoroughly disagree with the Secretary, and think the bill he proposes would result in a tax that would be harmful, I should like to spread my reasons upon the RECORD now, when they are likely to count for the most, since the subject is now being considered in the other body.

The Secretary says any other approach than this tax would be a departure from traditional policies regarding the free flow of capital and would be an attempt to control investment. Certainly, if this tax is imposed, if it has the effect which the Secretary asserts it would, it represents an inhibition to U.S. investment abroad and a return—because in this case it is capital which is being taxed—to high protective tariffs on U.S. imports of securities or viewed from another point of view, a duty on exports of capital, which runs contrary to our commitment to liberalized world trade.

The tax is discriminatory, since it selects only one aspect of private expenditures abroad; namely, private portfolio investment, while leaving unaffected private direct foreign investment, expenditures abroad for tourism, and so forth. For example, if a particular corporation desired to buy the security of another corporation abroad, it would be taxed. On the other hand, if it decided to make a direct investment in the corporation abroad, it would not be taxed. This is unfair and discriminatory.

This tax is very clearly a type of exchange control, because if we give the Secretary the exemptions he desires and leave the matter within the discretion of the President as to which country will or will not be affected, we are doing what the Secretary does not want to do, and we cease to have an automatic across-the-board tax. Instead, we would have discretionary control under the guise of administering the tax.

Secretary Dillon, in his letter to me of May 28, 1963, made a statement which clearly implies, that the tax would be self-defeating, because it would not

achieve its basic objective; namely, to achieve an increase in long-term interest rates.

The Secretary in his letter of May 28 said the following:

Even if long-term interest rates in the United States rose above those in Europe and Japan, we would expect foreign governments and corporations, particularly those needing relatively large amounts of money, to resort to the highly developed U.S. market.

It is the uncertainty over the fate of this proposal, rather than the increased cost of U.S. funds, that explains the reduced capital outflow claimed by the Secretary since July 18. I predict that if we are unwise enough to pass this tax, it will be paid, the capital outflows will continue and we will get no benefit whatever in the balance-of-payments situation.

Some very eminent authorities are opposed to this tax. I quote, for example, from an editorial in the New York Times of September 1, as follows:

The tax is difficult to reconcile with President Kennedy's frequent assertions that the present tax structure must be simplified and trade barriers reduced. The addition of the tax would complicate the tax structure and would establish a tariff on capital, putting into effect a two price system for funds. And despite the administration's claims that the tax will not interfere with the workings of the free market, it is clearly a form of control.

The effectiveness of the whole proposal has been significantly weakened by the numerous exceptions and exemptions which I have described, for commercial loans, for direct investment, for flotation from underdeveloped areas, and now, if the Treasury has its way, the right of exemption to the President, which would exempt Canada and perhaps Japan and other countries, leaving not much to the whole proposition.

The tax would be inequitable because it would penalize small investors who might have to pay the tax, but if it came to a large corporation, such as General Motors taking over a German subsidiary, it would not come under the tax. That would be the case of a large company purchasing a large direct interest in a foreign corporation.

According to available evidence, long-term interest rates would remain lower in the United States than in Canada, the United Kingdom, France, and Germany, even if the proposed tax raises U.S. long-term rates by 1 percent. Therefore, there is again considerable doubt that anything would happen to affect the capital outflow situation.

Yesterday the Secretary said that trading in foreign securities is continuing between the United States and foreign investors, although at a premium, allowing for the proposed tax. This is another indication that it will not work.

Therefore, I fail to be persuaded by Secretary Dillon's arguments in support of his proposal; or by his arguments in opposition to the capital issues committee.

I should like to spend a moment on the question of the establishment of a capital issues committee, which will work

and do the job that needs to be done, without any of the difficulties which are inherent in the tax proposal.

In the first place a capital issues committee would be an advisory committee of banks, investment houses, and brokers around the country. There is precedent for such a committee. We have had experience with a similar effort during the Korean war, in the Voluntary Credit Restraint Committee, which functioned very well under the umbrella of the Federal Reserve System.

Second, such a committee would only be established for the duration of the emergency and could be dismantled at will. That would not be the case with the tax, which would remain in effect at least until the end of 1965 whether needed or not and would have to be repealed by law to abolish it beforehand.

Third, the United States already has a very important voice in respect to such international financial transactions as those involving the expenditure of AID funds.

We require registration with the SEC of foreign securities sold publicly in the United States. We require the use of U.S. vessels in transporting Government-financed shipments. We have the Buy American Act.

Therefore, there are various types of regulations of foreign financial transactions in the United States. A Capital Issues Committee would be no sensational departure from the norm.

Finally, and very importantly, whereas the interest equalization tax is new and untried—no one has had any experience with it—a Capital Issues Committee is a tried and true operation, which has not only been used by us, but used in Switzerland, the United Kingdom, the Netherlands, and France. It is known and trusted by Europe. The Swiss National Bank and the Central Banks of the United Kingdom, the Netherlands, and France exercise reviewing authority over foreign security issues either alone or jointly with private financial institutions. Therefore, the proposal for a Capital Issues Committee is not a new proposal. Incidentally, it now has widespread support in the financial community in the United States.

It would be composed of commercial banks, brokers, investors, and public representatives, operating within the area and under the auspices of the Federal Reserve Bank of New York. The bank would be the agent, and would be safeguarded from the standpoint of the antitrust laws, to see that those laws were not abused, and in terms of other governmental policy considerations.

The fundamental function of such a committee would not be to directly control the flotation of capital issues. It would be a matter of the establishment of guidelines, which would guide bankers and brokers in the issues that ought to be financed, and which would also include some concept of overall figures within which there should be complete freedom of action.

This kind of advisory group, safeguarded in terms of obedience to Federal laws, such as the antitrust laws,

would be an excellent mechanism for the purpose of moderating capital outflow at a time when we are suffering from an imbalance in international payments.

In my judgment, and I believe in the judgment of the financial community of the United States, it would be much more onerous to do the job in a very unflexible and in a very dangerous way, leading directly to a form of Government control, than the advisory committee suggestion which I have made, and which already has support in the financial community generally.

Let us remember that we desire, and it is in our national interest, that the United States be the preeminent capital market in the world and that the dollar remain the most stable and substantial currency in the world.

Therefore, it is very important that we have an eye to what is acceptable to the financial community in the United States and in the world, and that we do not proceed in a doctrinaire way and fly in the face of the whole financial community of the United States. The equalization tax appears to be completely unacceptable to the whole financial community.

In summary, I think the Secretary of the Treasury was unduly hasty in rejecting the proposal advanced by responsible business and financial experts for the establishment of a capital issues committee, and that this proposal merits further consideration as a far more effective means to advance the objectives desired by the Secretary, to wit, some authority over the outflow of capital funds from the United States for financing abroad.

It is regrettable that during the course of his testimony the Secretary failed to deal with a far more basic cause of capital outflow from the United States, which is the relatively unfavorable investment climate which prevails here. U.S. capital will stay at home in much larger measure if we create an active economic climate in this country, conducive to a high rate of investing by the United States and foreign investors alike.

Let us remember that this is a question of net balance. The mere fact that an American invests in foreign securities is not a bad thing; it is a good thing. As a matter of fact, in the balance of international payments, already we are getting more in dollars in the way of debt service and dividends and returns from investing overseas today than we are losing from investing abroad. The important thing, in terms of the trend of our balance of payments, is that the net outflow shall not exceed materially the net inflow. The Secretary spoke in terms of capital outflows of \$200 million or \$300 million a half year as being a fairly acceptable figure. So what we are thinking about is the net balance.

From the point of view of encouraging a more favorable net balance, the approval of the investment community of the United States and the world is critically important.

So I urge upon the Secretary of State and the President two things: First, that the interest-equalization tax be rejected

in favor of a capital issues committee of the kind I have described. Second, far more fundamental approaches to the matter of our imbalance in international payments should be taken such as basically reforming and expanding the existing international monetary system as called for in my speech of September 3. In addition, we ought to take steps to reduce the net tourist outflow which costs us far more in terms of the balance of payments—about \$1,500 million a year net outflow—than capital outflows which are very constructive in terms of the U.S. role in the world. I am all for tourism, but let us remember that more than 70 other nations are restricting their tourist expenditures, and that that hurts us and reduces the income we receive from tourism. If other nations were to loosen up, there would be all the more reason for our continuing as we are.

A capital issues committee would do everything that taxes would do, and would do it in a much better way, and in a more businesslike way, more agreeably to the investment community of the United States and the world.

I sincerely hope that the Secretary and the President will utter the words which are the mark of people who are thoughtful and deeply concerned with the problem with respect to this alternative, the capital issues committee—the words “I am persuaded.” I hope the Secretary may recommend to the President that this is the better course.

One other point before I close: An interest-equalization tax can always be passed. It is much more desirable to try the capital issues committee alternative first, because it has every chance of working. If it does not work, we can always go to taxes.

I thank the majority leader for yielding to me.

AMENDMENT TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 551, S. 1605.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Agriculture and Forestry with an amendment to strike out all after the enacting clause and insert:

That section 2.z.(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C., 1958 ed., Supp. III, 135(z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: “other than

the registration number assigned to the economic poison”.

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word “and” at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word “and”, and adding after section 3.a.(2)(c), a new provision reading as follows: “(d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.”

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word “registrant” wherever it appears in subsection a. and in the first sentence of subsection c. to “applicant for registration” and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

“If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. The Secretary, on his own motion, may at any time refer such a matter to an advisory committee. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an ad-

ditional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency. Notwithstanding the provisions of section 3.c.(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals

for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a.(1) and section 9.a.(1) (b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered."

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Mr. ELLENDER. Mr. President, the bill was reported unanimously by the Committee on Agriculture and Forestry. There was no objection from the producers of insecticides or from farm organizations.

This bill makes two changes in the Federal Insecticide, Fungicide, and Rodenticide Act. The first change deals with registration of economic poisons under protest. The bill repeals the existing provision permitting such registration. In the future an economic poison would have to be determined to be in compliance with the act or it could not be registered and marketed in interstate commerce.

The second change deals with showing the registration number of an economic poison on its label. At present an economic poison is considered misbranded

if its label gives the slightest intimation that the product has been registered under the act. The bill would permit the registration number to be shown on the label; and, if the Secretary of Agriculture should so prescribe by regulation, the registration number would be required to be shown on the label.

The Federal Insecticide, Fungicide, and Rodenticide Act is designed to assure the public of safe and effective pesticides, or, as the act describes them, "economic poisons." Economic poisons are defined to include such preparations as insecticides, herbicides, plant regulators, defoliants, desiccants, and similar products. The act requires that they be honestly labeled, not adulterated, and meet various other requirements.

All economic poisons are required to be registered with the Secretary of Agriculture, and the Secretary at the time of registration makes a determination as to whether the product, its label, and the other materials required to be submitted at the time of registration comply with the requirements of the act. If the Secretary determines that the product and the label do not comply with the requirements of the act, he so advises the applicant for registration.

Under the existing law the registrant then has two alternatives. He may elect not to market the product, or he may request that the product be registered under protest. If the product actually does not comply with the act's requirements, registration does not protect the registrant from penalties and from seizure of the product. The applicant who registers under protest, having been advised that the Secretary considers his product as not complying with the act, may expect prosecution or seizure of his product when he begins marketing it in interstate commerce. In the case of such prosecution or seizure, the burden of proof rests upon the Government to prove that the product does not comply with the act. There have been very few products registered under protest, but protest registration does leave the door open to the marketing of a product which might be extremely dangerous to the public.

The bill therefore repeals the provision for registration under protest. If the product does not comply with the terms of the act it cannot be registered; and if it is not registered it cannot be marketed without being subject to the penalty and seizure provisions of the law. No further showing that it is misbranded, adulterated, or otherwise in violation of the act is necessary. The burden of proof is with the applicant at the time of registration to show that the product complies with the act.

At present registration under protest provides a means by which an applicant for registration may appeal from a decision of the Secretary with which he disagrees. However, in order to take this appeal, he must take actions which subject him to penalties, the product to seizure, and the public to possible danger if the Secretary's determination should prove to be correct.

In lieu of this unsatisfactory type of appeal, the bill provides for administra-

tive and judicial appeals. An applicant or registrant who disagrees with the Secretary's determination to refuse or cancel registration may request that the matter be referred to an advisory committee which would consider the matter and make recommendations which the Secretary could follow or not as he saw fit. The bill also permits the applicant or registrant to file objections and request public hearings, either after the Secretary has received and acted upon the advisory committee's recommendations, or without having gone through the advisory committee procedure. The hearing would be followed by a final order of the Secretary, which would then be subject to judicial review.

The bill therefore provides better procedures to protect the applicant or registrant from any arbitrary determination by the Secretary of Agriculture than does the existing law. In order that these appeal procedures may not cause delays in cases where the public might be endangered, the bill provides for suspension of registration immediately if necessary to prevent imminent hazards to the public. Such suspension could then be followed by the various appeal procedures.

At present the law prohibits the label from showing that the product has been registered under the act. This information would be useful to a prospective user of the product, since it provides some assurance that the Secretary has investigated the product and that it is properly labeled. If the product is to be used in the production of agricultural commodities, the fact that it has been registered provides some assurance that if the directions on the label are followed, the commodities produced will meet the requirements of the Federal Food, Drug, and Cosmetic Act insofar as possible residues of this particular poison are concerned. The bill therefore permits the label to show the product's registration number; and requires it to be shown if the Secretary should so prescribe.

The committee held hearings on this bill, and all witnesses favored its objectives. The committee amendment modifies the bill only to the extent of including a number of technical and procedural suggestions of the industry and the Department of Agriculture.

Mr. RIBICOFF. Mr. President, will the Senator from Louisiana yield?

Mr. ELLENDER. I yield.

Mr. RIBICOFF. On behalf of the subcommittee, I express our gratitude to the Senator from Louisiana and the members of his committee for reporting the measure.

The Senator from Kansas [Mr. PEARSON], the Senator from New York [Mr. JAVITS], the Senator from Rhode Island [Mr. PELL], and I held hearings on the bill. The hearings disclosed the loophole which is sought to be closed by the bill. It is most important for the health and welfare of the people.

Mr. GORE. Mr. President, will the Senator from Connecticut yield?

Mr. RIBICOFF. I yield.

Mr. GORE. Does the bill relate strictly to labeling, numbering, and identification; or does it go further and pro-

pose, as I hope would be the case, a genuine study of the possible health hazards involved in the use of insecticides?

Mr. RIBICOFF. The subcommittee conducted long and careful hearings on the subject. As we discovered a particular loophole, we made recommendations to the appropriate committee.

The first thing we discovered was that certain pesticides were being placed on the market after they had been rejected by the Secretary of Agriculture, merely by the filing of a protest registration. This was a bad loophole in the law, because it allowed toxic pesticides to be placed on the market. We therefore called the attention of the Committee on Agriculture to this situation.

The bill would close such loopholes, so that if a pesticide is declared to be unsafe, the manufacturer will not be able to market it merely by filing a protest registration.

Mr. GORE. As I understand, the bill is partially the result of a thorough study which the committee has made.

Mr. RIBICOFF. That is correct. We shall continue to investigate thoroughly every phase of the problem. As we reach our conclusions, we will from time to time make recommendations to Congress. This bill is one of the results of our study. But this measure is of such clear importance and solves such a specific problem that it is well we act on it promptly. I hope the House of Representatives will complete action at an early date.

Mr. President, a quarter of a century ago there were fewer than six primary chemicals available for use as pesticides. Today over 50,000 formulations based on more than 500 individual chemical compounds are registered with the Department of Agriculture.

In this wide range of complex products—many with similar properties but each one differing from the other in some important aspect—there is included a great variety of toxicants. They vary from insecticides for corn borers to repellants for mosquitoes, from nematocides for tobacco to ant and cockroach killers, from herbicides for lawns to killers of rats and mice, from fungicides for wood to insecticides for malaria mosquitoes.

The United States produces and uses more of these products than any other nation. And the trend is continuing upward. In 1954 over 400 million pounds of synthetic organic pesticides valued at something over \$150 million were produced. Preliminary 1962 figures show production exceeding 700 million pounds valued at over \$400 million. By 1975 it is estimated pesticide sales alone will reach the \$2 billion mark.

Despite the huge increase in these materials since the end of World War II there has been no basic revision of the pesticide regulation laws administered by U.S. Department of Agriculture since that time.

According to the Director of the Pesticides Regulation Division of the Department of Agriculture, the 1947 act—known as the Federal Insecticide, Fungicide, and Rodenticide Act—is "basically a labeling law which protects the public

by requiring that the label be adequate to protect the public, when followed." The key protective feature of the law—as pointed out frequently by Department of Agriculture officials over the years—was that all pesticides were required to be registered with the Secretary of Agriculture before they could be sold in interstate commerce. Registration, we have been told, meant that the product was effective and safe when used as directed.

Yet despite such assurance there existed from the beginning a loophole in the law. Secretary of Agriculture Freeman described this gap to our Subcommittee on Reorganization last May during our hearing on the use of pesticides as follows:

One provision of the Insecticide, Fungicide, and Rodenticide Act, in our opinion, subjects the public to danger. If the Department denies registration, the law now permits a manufacturer to register his product "under protest." The product can then be sold to the public until we are able to develop performance and toxicity records and take legal action to remove it from the market.

This is a loophole in the law that should be closed. We believe the act should be amended to do away with the provision that permits registration "under protest," and our recommendations to this effect are now under consideration in the executive branch.

Actually these recommendations had been under consideration—we learned—since 1960 but action in the executive branch was slow. Instead of waiting for further consideration, I introduced along with Senators PEARSON, PELL, and JAVITS the bill now before us.

There was no need to wait for further consideration. The facts were obvious and the need was clear.

Over Government objection and despite doubts as to a product's safety or effectiveness, a manufacturer could, if he chose, market his product "under protest" and the registration would be considered perfectly valid—with nothing on the label to differentiate it from other products properly registered. For 4 years this problem has remained unresolved. That is why I introduced S. 1605 4 days after Secretary Freeman's testimony.

This bill closes a loophole that posed a constant threat to the health and safety of the American people. Any product could be sold to the public even though evidence of its safety was completely lacking. This bill ends that possibility once and for all.

Fortunately, we have been able to avoid a national tragedy while this gap in consumer protection remained in the law. Only a very few products, out of the thousands registered, have been protest-registered over the past 16 years. Even these have been too many and it is time to close the gap.

Despite our relatively good fortune in the past, the danger of an unsafe product coming on the market is always with us under existing law. Let me give you a few examples of what I mean.

A number of manufacturers have submitted for registration under the Federal Insecticide, Fungicide, and Rodenticide Act labeling for chlordane aerosol

formulations for household use. These were intended for use in controlling various household pests, including flies and mosquitoes. Registration was refused for products bearing directions for use which would result in an aerosol dispersal of chlordane. USDA pharmacologists did not consider such a use to be safe. Their judgment was based partly on the findings of the Food and Drug Administration, which showed that chlordane formulations in some cases could produce skin and eye irritation. Since aerosol uses risk contact of the spray with skin and eyes, such usage could not be accepted and registration was refused. The Public Health Service was asked to review this matter and endorsed the decision.

On a number of occasions registration of floor waxes containing dieldrin has been requested. Such products were intended for use in controlling various household insects. USDA pharmacologists did not consider complete floor coverage with such waxes to be safe, and refused to register them. Dieldrin formulas for household use required directions which would not exceed the patterns set forth in USDA interpretation 19. It was concluded that no directions could be written which would meet the requirements of this interpretation, and still provide a useful floor wax.

USDA was asked by one firm to consider registration of a parathion formulation for use in rodent control. Another firm asked USDA about the possibility of obtaining registration for a parathion product for household use, and for the control of fleas and other pet insect parasites. These firms were informed that such uses were unacceptable due to the high toxicity of parathion. USDA toxicological experience and the scientific literature indicated that such use would be hazardous and would risk injury or death. Since there was much more than a "reasonable doubt" as to the propriety of the use, registration was denied.

As a result of cases of methemoglobinemia reported in premature infants on whom diapers treated with disinfectants containing TCC were used, USDA reviewed the registration status of all formulations containing this compound. Registration was canceled on several products where directions for use involved industrial laundry soaps wherein the treated diapers or clothing could likely be autoclaved in routine hospital practice. Due to this action, all such products were removed from use. This specific action was taken, since detailed studies have proved that TCC was capable of decomposition, and diapers were able to absorb the breakdown products in hospital autoclaves. In addition, USDA required manufacturers to place on the labels of certain laundry products warnings against boiling or autoclaving.

Each of these 4 products could be on the market today under protest registration. Only after accumulation of considerable evidence could USDA move against them and cause their removal. The public, in the meantime, would serve as guinea pig. This bill makes sure that such a possibility will not happen.

The policy of this Nation should always be that a pesticide should not come on the market until adequate proof of safety has been established and it should not be left for the public to play the role of guinea pig while the true facts of toxicity are brought out. Today, it is possible under the law to subject the public to that role when the Government is not satisfied with the manufacturer's proof of safety and yet lacks definite evidence of lack of safety. That grey area must be decided in favor of the public—the consumer.

Protest registration was supposedly a technique to force a court review whenever the manufacturer and the Government disagreed on the safety or effectiveness of the product in question. The proposed legislation rejects this archaic concept of consumer protection and substitutes a system under which both the public's interest and a manufacturer's rights are protected. And this protection runs from the initial decision, through an advisory committee, through a hearing on the record, through judicial review.

In addition, the legislation requires that every pesticide formulation carry its official registration number on the label. In this way the public will be able to tell at a glance that the product on the shelf has satisfied the requirements of Federal law as to its effectiveness and safety when used according to the directions on the label.

This legislation is recommended by the President's Science Advisory Committee. It has been endorsed by the heads of the various affected Federal agencies, the regulated industry and by every witness to appear before our Senate subcommittee now studying the problem of the use of pesticides. I urge its adoption.

Mr. PEARSON. Mr. President, I should like to join the Senator from Connecticut in expressing appreciation to the Senator from Louisiana for reporting the bill. The measure is the direct result of the work of the subcommittee in dealing with pesticides. I believe it carries the endorsement of the appropriate authorities and agencies of the Government. It will be of public service.

Mr. YOUNG of North Dakota. Mr. President, I commend the distinguished Senator from Connecticut, who is a former Secretary of Health, Education, and Welfare, for doing a vast amount of work in this field. The American public is deeply concerned about the use of insecticides and pesticides. The bill is a step in the right direction.

The Department of Agriculture has concerned itself with this problem. In my own State a \$2 million Federal research laboratory is now being completed to conduct work in this field alone. More should be done.

Mr. JAVITS. Mr. President, S. 1605 is important not only from the standpoint of eliminating the evils and dangers of pesticides; it is very important that pesticides shall continue to be used. That was the emphasis of the testimony of experts who have appeared before the subcommittee. The danger was that our food supplies would be materially af-

fectured if we suddenly wiped out the use of insecticides and pesticides by impossible regulations. Therefore, it is doubly important that the Senate understand that the purpose of the bill is not only to prevent the evils which the Senator has suggested, but also to ensure legitimate and constructive uses of insecticides and pesticides in connection with our food supply.

Mr. RIBICOFF. The Senator from New York is correct.

Mr. PELL. Mr. President, I am happy to add my full support to the bill proposed by the distinguished Senator from Connecticut to plug a dangerous loophole in our pesticide registration laws.

This bill would simply make it more difficult for manufacturers to market products which should not be sold to the public, but which under existing law could conceivably come into the hands of unsuspecting buyers.

As things now stand, a manufacturer can insist on securing a "protest registration" even though the Department of Agriculture has raised doubts as to the safety and effectiveness of his product. I am informed that most manufacturers actually comply with the Department's suggestions, but that a small number—1 in every 2,280 registrations now granted—insist on marketing their products under the protest registrations.

This is of course a very small area of risk, but it is a significant one when chemicals and public health are involved. Clearly, we must take no chances. S. 1605 solves the problem by establishing new and more rigorous procedures for registration, and for this reason, I urge that it be adopted by the Senate today.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1605) was ordered to be engrossed for a third reading, was read the third time, and passed.

EXECUTIVE SESSION

The Senate resumed the consideration of executive business.

PROTOCOL TO AMEND CONVENTION ON INTERNATIONAL CIVIL AVIATION; CONVENTION ON EXTRADITION WITH SWEDEN; ADDITIONAL PROTOCOL TO THE TREATY OF EXTRADITION WITH BRAZIL; EXTRADITION CONVENTION WITH ISRAEL; CONSULAR CONVENTION WITH KOREA; CONSULAR CONVENTION WITH JAPAN

The Senate resumed the consideration of the protocol, Executive D (88th Cong., 1st sess.), to amend the Convention on International Civil Aviation; the convention, Executive E (87th Cong., 2d sess.), on extradition with Sweden; the additional protocol, Executive F (87th

Cong., 2d sess.), to the Treaty of Extradition with Brazil; the extradition convention, Executive E (88th Cong., 1st sess.), with Israel; the consular convention, Executive B (88th Cong., 1st sess.), with Korea; and the consular convention, Executive I (88th Cong., 1st sess.), with Japan.

Mr. MANSFIELD. Mr. President, notwithstanding the unanimous-consent agreement, I ask unanimous consent that at this time there may be a quorum call for not to exceed 1 minute, and that then the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I believe the 1 minute has now expired.

The PRESIDING OFFICER. That is correct; and the order for the quorum call is rescinded.

Pursuant to the previous order, the hour of 2 o'clock having arrived, the question is on agreeing to the resolutions of ratification of the various pending protocols and conventions.

On this question, the yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Maryland [Mr. BREWSTER], the Senator from Virginia [Mr. BYRD], the Senator from Nevada [Mr. CANNON], the Senator from Idaho [Mr. CHURCH], the Senator from Pennsylvania [Mr. CLARK], the Senator from Indiana [Mr. HARTKE], the Senator from North Carolina [Mr. JORDAN], the Senator from North Carolina [Mr. JORDAN], the Senator from Washington [Mr. MAGNUSON], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Virginia [Mr. ROBERTSON], the Senator from Tennessee [Mr. WALTERS], and the Senator from Ohio [Mr. LAUSCHE] are absent on official business.

I further announce that the Senator from Mississippi [Mr. EASTLAND] and the Senator from Oklahoma [Mr. EDMONDSON] are necessarily absent.

I also announce that the Senator from California [Mr. ENGLE] is absent because of illness.

I further announce that, if present and voting, the Senator from Maryland [Mr. BREWSTER], the Senator from Virginia [Mr. BYRD], the Senator from Nevada [Mr. CANNON], the Senator from Idaho [Mr. CHURCH], the Senator from Pennsylvania [Mr. CLARK], the Senator from Indiana [Mr. HARTKE], the Senator from North Carolina [Mr. JORDAN], the Senator from Washington [Mr. MAGNUSON], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Virginia [Mr. ROBERTSON], the Senator from Tennessee [Mr. WALTERS], and the Senator from Ohio [Mr. LAUSCHE] would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Delaware [Mr. BOGGS] and the Senator from South Dakota [Mr. MUNDT] are absent because of illness.

The Senator from New Hampshire [Mr. COTTON] is absent on official business as congressional adviser to the Radio Conference of the International Telecommunications Union, Geneva, Switzerland.

The Senator from Kentucky [Mr. COOPER], the Senator from Illinois [Mr. DIRKSEN], the Senator from Idaho [Mr. JORDAN], the Senator from Iowa [Mr. MILLER], and the Senator from Texas [Mr. TOWER] are necessarily absent.

The Senator from Wyoming [Mr. SIMPSON] and the Senator from Delaware [Mr. WILLIAMS] are detained on official business.

If present and voting, the Senator from Delaware [Mr. BOGGS], the Senator from Kentucky [Mr. COOPER], the Senator from Illinois [Mr. DIRKSEN], the Senator from Idaho [Mr. JORDAN], the Senator from Iowa [Mr. MILLER], the Senator from Texas [Mr. TOWER], and the Senator from Wyoming [Mr. SIMPSON] would each vote "yea."

The yeas and nays resulted—yeas 74, nays 0, as follows:

[No. 198 Ex.]

YEAS—74

Aiken	Hickenlooper	Moss
Allott	Hill	Muskie
Anderson	Holland	Nelson
Barlett	Hruska	Neuberger
Bayh	Humphrey	Pastore
Beall	Inouye	Pearson
Bennett	Jackson	Pell
Bible	Javits	Proity
Burdick	Johnston	Proxmire
Byrd, W. Va.	Keating	Ribicoff
Carlson	Kennedy	Russell
Case	Kuchel	Saltonstall
Curtis	Long, Mo.	Scott
Dodd	Long, La.	Smathers
Dominick	Mansfield	Smith
Douglas	McCarthy	Sparkman
Ellender	McClellan	Stennis
Ervin	McGee	Symington
Fong	McGovern	Talmadge
Fulbright	McIntyre	Thurmond
Goldwater	McNamara	Williams, N.J.
Gore	Mechem	Yarborough
Gruening	Metcalf	Young, N. Dak.
Hart	Monroney	Young, Ohio
Hayden	Morton	

NAYS—0

NOT VOTING—26

Boggs	Eastland	Morse
Brewster	Edmondson	Mundt
Byrd, Va.	Engle	Randolph
Cannon	Hartke	Robertson
Church	Jordan, N.C.	Simpson
Clark	Jordan, Idaho	Tower
Cooper	Lausche	Walters
Cotton	Magnuson	Williams, Del.
Dirksen	Miller	

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolutions of ratification are agreed to.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

CONSTRUCTION AT CERTAIN MILITARY INSTALLATIONS

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, which will be stated.

The LEGISLATIVE CLERK. A bill (H.R. 6500) to authorize certain construction at military installations, and for other purposes.

Mr. RUSSELL. Mr. President, the bill before the Senate provides construction and other related authority for the military departments and agencies of the Department of Defense within and outside the United States, including authority for the construction of facilities for the Reserve components. The total sum of new authorization contained in the bill is \$1,682,255,380. In addition thereto, approval is granted for an increase in prior years' authority of \$3,606,000, or a total authorization of \$1,685,861,380.

The Army would be authorized \$202.8 million; the Navy \$211 million; the Air Force \$488.6 million; the Department of Defense \$24.4 million; for family housing \$720.4 million; and a total of \$38.6 million for the Reserve components. As submitted to the Congress this year, the bill called for a total authorization of \$1,855,411,000. Subsequently, however, the Department of Defense made several additional requests for both new authority and increases in authority granted in prior years, totaling \$35,199,000, about \$21 million of which was received in the Senate after the bill had passed the House of Representatives.

Thus, the Senate committee was called upon to consider requests of over \$1.9 billion. The authority finally granted by the committee is \$214,748,620 less than the amount requested, and \$52,389,380 above the amount approved by the House of Representatives. I might point out that the authority requested this year is some \$259 million more than was requested last year. This apparent increase, however, is more than offset by the fact that this year, for the first time, the committee was called upon to authorize all costs related to the military family housing program. This includes not only the cost of new construction but also the costs of maintenance, operation, debt payments on outstanding mortgages, and other similar expenditures.

The authorization requested in this year's bill is based upon a 5-year projection of the missions and forces to be supported through fiscal year 1968. Such projections are important in planning military construction in view of the lead time required for many construction projects. The committee is convinced that the authority granted in the bill now before the Senate adequately provides for the fiscal year 1964 increment for this 5-year program, which construction needs to be in place by the end of the fiscal year 1966.

Almost half the projects in the bill will provide operational and training facilities. Included therein are the projects for the strategic retaliatory and continental air and missile forces which remain the basic elements of our deterrent policy. These forces cannot be relied upon alone, however, and we must provide for our general purpose forces if we are to adequately meet our global commitments. Next in the order of magnitude, then, are the provisions to provide for these forces which include projects to house and support the troops including provisions of medical and community facilities.

Of course, Mr. President, most important, is the construction provided for

88TH CONGRESS
1ST SESSION

S. 1605

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 1963

Referred to the Committee on Agriculture

AN ACT

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2.z. (2) (b) of the Federal Insecticide, Fungi-
4 cide, and Rodenticide Act (61 Stat. 163, as amended, 7
5 U.S.C., 1958 ed., Supp. III, 135 (z) (2) (b)) is hereby
6 amended by inserting before the semicolon at the end there-
7 of the following phrase: "other than the registration num-
8 ber assigned to the economic poison".

9 SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C.

1 135a) is hereby amended by deleting the word "and" at
2 the end of section 3.a. (2) (b) , deleting the period at the end
3 of section 3.a. (2) (c) and inserting in lieu thereof a semi-
4 colon and the word "and", and adding after section 3.a. (2)
5 (c) , a new provision reading as follows: "(d) when re-
6 quired by regulation of the Secretary to effectuate the pur-
7 poses of this Act, the registration number assigned to the
8 article under this Act."

9 SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
10 135b) is hereby amended by changing the word "registrant"
11 wherever it appears in subsection a. and in the first sentence
12 of subsection c. to "applicant for registration" and by delet-
13 ing the remainder of subsection c. and inserting in lieu thereof
14 the following:

15 "If, upon receipt of such notice, the applicant for regis-
16 tration does not make the corrections, the Secretary shall
17 refuse to register the article. The Secretary, in accordance
18 with the procedures specified herein, may suspend or cancel
19 the registration of an economic poison whenever it does not
20 appear that the article or its labeling or other material re-
21 quired to be submitted complies with the provisions of this
22 Act. Whenever the Secretary refuses registration of an
23 economic poison or determines that registration of an eco-
24 nomic poison should be canceled, he shall notify the applicant
25 for registration or the registrant of his action and the reasons

1 therefor. Whenever an application for registration is re-
2 fused, the applicant, within thirty days after service of notice
3 of such refusal, may file a petition requesting that the matter
4 be referred to an advisory committee or file objections and
5 request a public hearing in accordance with this section. A
6 cancellation of registration shall be effective thirty days
7 after service of the foregoing notice unless within such time
8 the registrant (1) makes the necessary corrections; (2) files
9 a petition requesting that the matter be referred to an ad-
10 visory committee; or (3) files objections and requests a public
11 hearing. The Secretary, on his own motion, may at any
12 time refer such a matter to an advisory committee. Each
13 advisory committee shall be composed of experts, qualified
14 in the subject matter and of adequately diversified profes-
15 sional background selected by the National Academy of
16 Sciences and shall include one or more representatives from
17 land-grant colleges. The size of the committee shall be deter-
18 mined by the Secretary. Members of an advisory committee
19 shall receive as compensation for their services a reasonable
20 per diem, which the Secretary shall by rules and regulations
21 prescribe, for time actually spent in the work of the committee,
22 and shall in addition be reimbursed for their necessary travel-
23 ing and subsistence expenses while so serving away from their
24 places of residence, all of which costs may be assessed against
25 the petitioner, unless the matter was referred to the advisory

1 committee upon the motion of the Secretary without a peti-
2 tion. The members shall not be subject to any other pro-
3 visions of law regarding the appointment and compensa-
4 tion of employees of the United States. The Secretary shall
5 furnish the committee with adequate clerical and other assist-
6 ance, and shall by rules and regulations prescribe the proce-
7 dures to be followed by the committee. The Secretary shall
8 forthwith submit to such committee the application for reg-
9 istration of the article and all relevant data before him.
10 The petitioner, as well as representatives of the United States
11 Department of Agriculture, shall have the right to consult
12 with the advisory committee. As soon as practicable after
13 any such submission, but not later than sixty days thereafter,
14 unless extended by the Secretary for an additional sixty days,
15 the committee shall, after independent study of the data sub-
16 mitted by the Secretary and all other pertinent information
17 available to it, submit a report and recommendation to the
18 Secretary as to the registration of the article, together with
19 all underlying data and a statement of the reasons or basis
20 for the recommendations. After due consideration of the
21 views of the committee and all other data before him, the
22 Secretary shall, within ninety days after receipt of the report
23 and recommendations of the advisory committee, make his
24 determination and issue an order, with findings of fact, with
25 respect to registration of the article and notify the applicant

1 for registration or registrant. The applicant for registra-
2 tion, or registrant, may, within sixty days from the date of
3 the order of the Secretary, file objections thereto and request
4 a public hearing thereon. In the event a hearing is re-
5 quested, the Secretary shall, after due notice, hold such pub-
6 lic hearing for the purpose of receiving evidence relevant and
7 material to the issues raised by such objections. Any report,
8 recommendations, underlying data, and reasons certified to
9 the Secretary by an advisory committee shall be made a part
10 of the record of the hearing, if relevant and material, sub-
11 ject to the provisions of section 7 (c) of the Administrative
12 Procedure Act (5 U.S.C. 1006 (c)). The National Acad-
13 emy of Sciences shall designate a member of the advisory
14 committee to appear and testify at any such hearing with
15 respect to the report and recommendations of such committee
16 upon request of the Secretary, the petitioner, or the officer
17 conducting the hearing: *Provided*, That this shall not pre-
18 clude any other member of the advisory committee from
19 appearing and testifying at such hearing. As soon as prac-
20 ticable after completion of the hearing, the Secretary shall
21 evaluate the data and reports before him, act upon such
22 objections and issue an order granting, denying, or cancel-
23 ing the registration. Such order shall be based only on
24 substantial evidence of record at such hearing, including any

1 report, recommendations, underlying data, and reason certi-
2 fied to the Secretary by an advisory committee, and shall set
3 forth detailed findings of fact upon which the order is based.
4 In connection with consideration of any registration or
5 application for registration under this section, the Secretary
6 may consult with any other Federal agency. Notwithstand-
7 ing the provisions of section 3.c. (4) , information relative to
8 formulas of products acquired by authority of this section
9 may be revealed, when necessary under this section, to an
10 advisory committee, or to any Federal agency consulted, or
11 at a public hearing, or in findings of fact issued by the
12 Secretary. Notwithstanding any other provision of this sec-
13 tion, the Secretary may, when he finds that such action is
14 necessary to prevent an imminent hazard to the public, by
15 order, suspend the registration of an economic poison im-
16 mediately. In such case, he shall give the registrant prompt
17 notice of such action and afford the registrant the
18 opportunity to have the matter submitted to an advisory
19 committee and for an expedited hearing under this section.
20 Final orders of the Secretary under this section shall be
21 subject to judicial review, in accordance with the provisions
22 of subsection d. In no event shall registration of an article
23 be construed as a defense for the commission of any offense
24 prohibited under section 3 of this Act."

25 SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C,

1 135b) is hereby further amended by redesignating subsec-
2 tions d. and e. as subsections e. and f., and by adding a new
3 subsection d., as follows:

4 “d. In a case of actual controversy as to the validity
5 of any order under this section, any person who will be
6 adversely affected by such order may obtain judicial review
7 by filing in the United States court of appeals for the cir-
8 cuit wherein such person resides or has his principal place
9 of business, or in the United States Court of Appeals for the
10 District of Columbia Circuit, within sixty days after the
11 entry of such order, a petition praying that the order be
12 set aside in whole or in part. A copy of the petition shall
13 be forthwith transmitted by the clerk of the court to the
14 Secretary, or any officer designated by him for that purpose,
15 and thereupon the Secretary shall file in the court the rec-
16 ord of the proceedings on which he based his order, as pro-
17 vided in section 2112 of title 28, United States Code. Upon
18 the filing of such petition, the court shall have exclusive
19 jurisdiction to affirm or set aside the order complained of
20 in whole or in part. The findings of the Secretary with
21 respect to questions of fact shall be sustained if supported
22 by substantial evidence when considered on the record as a
23 whole, including any report and recommendation of an ad-
24 visory committee. If application is made to the court for
25 leave to adduce additional evidence, the court may order such

1 additional evidence to be taken before the Secretary, and to
2 be adduced upon the hearing in such manner and upon such
3 terms and conditions as to the court may seem proper, if such
4 evidence is material and there were reasonable grounds for
5 failure to adduce such evidence in the proceedings below.
6 The Secretary may modify his findings as to the facts and
7 order by reason of the additional evidence so taken, and shall
8 file with the court such modified findings and order. The
9 judgment of the court affirming or setting aside, in whole or
10 in part, any order under this section shall be final, subject to
11 review by the Supreme Court of the United States upon
12 certiorari or certification as provided in section 1254 of
13 title 18 of the United States Code. The commencement of
14 proceedings under this section shall not, unless specifically
15 ordered by the court to the contrary, operate as a stay of an
16 order. The court shall advance on the docket and expedite
17 the disposition of all causes filed therein pursuant to this
18 section.”

19 SEC. 5. The first sentence of section 8.b. of said Act (61
20 Stat. 170; 7 U.S.C. 135f. (b)) is hereby amended by delet-
21 ing that part beginning with the second proviso therein down
22 to, but not including, the period at the end thereof.

23 SEC. 6. Section 3.a. (1) and section 9.a. (1) (b) of
24 said Act (61 Stat. 166, 170; 7 U.S.C. 135a. (a) (1) ,
25 135g. (a) (1) (b)) are hereby amended by changing the

1 phrase "has not been registered" wherever it appears there-
2 in, to read "is not registered".

3 SEC. 7. This Act and the amendments made hereby
4 shall become effective upon enactment, and all existing regis-
5 trations under protest issued under said Federal Insecticide,
6 Fungicide, and Rodenticide Act shall thereupon terminate.

Passed the Senate October 22, 1963.

Attest:

FELTON M. JOHNSTON,

Secretary.

AN ACT

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

OCTOBER 23, 1963

Referred to the Committee on Agriculture

Nov. 14, 1963

(pp. 20709-29, 20735). Agreed to an amendment by Rep. Sullivan, giving the President "the clear-cut authority to obtain full and exact information" on all coffee purchase prices rather than only on a spot ^{price} price check (pp. 20725-6). Rejected an amendment by Rep. Halpern, setting a ceiling of 5¢ a pound above the level of 1962 prices. (pp. 20726-7). By a vote of 59 to 81, rejected an amendment by Rep. Findley, requiring the President to "clarify by publication in the Federal Register his judgment the International Coffee Agreement would not result in increased coffee prices for U. S. consumers." (p. 20728).

12. LIVESTOCK AND MEATS. Rep. Rosenthal urged the Federal Government to support a supply management-price support program for the livestock industry and restriction of livestock imports and also complimented USDA's livestock research and disease eradication programs. pp. 20730-1
13. WATER RESOURCES. Rep. Pepper inserted address of the President of the National Rivers and Harbors Congress, "Our Water Resources in the National Defense," expressing his idea that there is a need for a Government agency "charged with the responsibility of determining and regularly reporting to Congress the probable wartime need for facilities for transportation, water supply or hydroelectric power in addition to those now existing or planned." pp. 20732-3
14. OUTDOOR RECREATION. The Interior and Insular Affairs Committee reported with amendment H. R. 3846, to establish a land and water conservation fund to assist the States and Federal agencies in meeting present and future outdoor recreation demands and needs. (H. Rept. 900). p. 20744
15. PESTICIDES. The Departmental Oversight and Consumer Relations Subcommittee of the Agriculture Committee voted to report to the full committee with amendment H. R. 6828, to provide for labeling of economic poisons and to eliminate registration of pesticides under protest. p. D895
16. FEDERAL AID. Rep. Perkins discussed the unemployment problem in eastern Kentucky, complimenting the accelerated public works, area redevelopment, food stamp, highway aid, and water pollution control programs in that area and urged a fuller reach of these program, especially of the flood control and recreational facility programs, into the communities. pp. 20741-2
17. PUBLIC WORKS; APPROPRIATIONS. Received from the President an amendment to the budget for the fiscal year 1964 in the amount of \$45 million for public works acceleration (H. Doc. 173). p. 20744
18. LEGISLATIVE PROGRAM. Rep. Albert announced next weeks program: Mon., recreational facilities at the Sanford Reservoir area; Tues., the public works appropriation bill. p. 20730
19. ADJOURNED until Mon., Nov. 18. p. 20743

ITEMS IN APPENDIX

20. ELECTRIFICATION. Extension of remarks of Rep. Teague criticizing the continuation of REA programs and stating that REA "still gets nearly half a billion dollars of appropriations each year, though its legal job is at least 98 percent completed." p. A7056

21. AREA REDEVELOPMENT. Extension of remarks of Rep. Harvey criticizing an ARA loan toward the construction of a resort area near Hill City, Minn. p. A7058
22. PEACE CORPS. Speech in the House by Rep. Frelinghuysen expressing his support for continuation of the Peace Corps. p. A7060
23. FOREIGN TRADE. Extension of remarks of Rep. Griffiths inserting an article on the merits of a common market for the U.S. and Canada. p. A7067
Extension of remarks of Rep. Moore inserting a "brief study of the so-called law of comparative advantage," and ^{stating} that "this law is basic to much of the philosophy underlying the current trade policy of this country..." pp. A7075-8
24. LANDS; FORESTRY. Extension of remarks of Rep. Johnson (Calif.) inserting A. W. Greeley's, Deputy Chief of the Forest Service, "excellent progress report on the multiple use mining law before the Fifth American Forest Congress." pp. A7073-4
25. PRICES. Extension of remarks of Rep. Dingell inserting an article opposing the proposed quality stabilization bill. pp. A7080-1
26. FOOD-FOR-PEACE. Extension of remarks of Rep. Brademas inserting an article, "The Art of Stretching a Dollar," and stating that it "describes one aspect of our foreign aid program known as food for peace." pp. A7081-2
27. WHEAT; FOREIGN TRADE. Extension of remarks of Rep. Marsh stating that the proposed "wheat deal with the Soviet Union continues to cause concern among many citizens." p. A7086
28. COFFEE. Extension of remarks of Rep. Derounian expressing his opinion that passage of the bill to implement the International Coffee Agreement will result in higher coffee prices. p. A7088

BILLS INTRODUCED

29. MARKETING. H. R. 9134, by Rep. Stratton, to amend the Agricultural Marketing Agreement Act of 1937 with respect to the procedure for amending orders; to Agriculture Committee.
30. LOANS. S. 2307, by Sen. Muskie, to amend the emergency loan authority of the Secretary of Agriculture under subtitle C of the Consolidated Farmers Home Administration Act of 1961 to authorize such loans in areas where credit is not otherwise available because of serious economic conditions for farmers or ranchers; to Agriculture and Forestry Committee. Remarks of author, p. 20818

BILL APPROVED BY THE PRESIDENT

31. LANDS. S. 876, authorizing GSA to convey a tract of land formerly under jurisdiction of the Agricultural Research Service, in Prince Georges County, Md., to the American National Red Cross. Approved November 13, 1963 (Public Law 88-179).

0

COMMITTEE HEARINGS NOV. 15:

Proposed commission on automation, S. Labor.

Proposed shorter work-week, H. Labor (Farm Bureau to testify).

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Jan. 24, 1964
For actions of Jan. 23, 1964
88th-2nd; No. 12

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HIGHLIGHTS: Sen. Carlson commended adoption of new wheat grading standards. Sen. McGee urged quotas on wool imports. Sen. McGovern praised and Sen. Miller urged investigation of food-for-peace program. Sen. Miller inserted livestock assoc. resolution favoring quotas on meat imports. Sen. Miller inserted article critical of loan guarantees on wheat sales to Russia. Several Representatives urged action to restrict beef imports. House committee voted to report pesticide labeling bill. Rep. Findley inserted articles criticizing Cooley cotton bill. Rep. Horton introduced and discussed bill to increase dairy industry support of milk promotion and research programs.

HOUSE

1. BEEF IMPORTS. Several Representatives urged action by the executive branch to restrict beef imports and criticized Commerce Secretary Hodges for his statement that farmers should "stop whining" about beef imports and should stress improvements in merchandising. pp. 952-69
2. PESTICIDES. The Agriculture Committee voted to report (but did not actually report) with amendment H. R. 6828 (a clean bill to be introduced), to provide for labeling of economic poisons with registration numbers so as to eliminate registration under protest. p. D41
3. RECREATION. The "Daily Digest" states that it "erroneously stated, on Jan. 22," that the Interior and Insular Affairs Committee voted to report to the House H. R. 1803, to provide for the establishment of the Ozark National Rivers, Mo., recreation area which would include national forest lands, but "actually, the bill was considered with no final action." p. D42

4. APPROPRIATIONS. In addition to the items for this Department in the supplemental appropriation estimates submitted by the President on Jan. 21 (see Digest 10), other items were included as follows: \$60,000,000 for expansion and improvement of vocational education, \$216,204,000 for payments to school districts in areas affected by Federal activities, \$2,000,000 for grants for air pollution control activities, \$55,000,000 for manpower development and training activities of the Department of Labor, \$30,000,000 for unemployment compensation benefits for Federal employees and ex-servicemen, and \$430,000 for compliance activities of the Mexican farm labor program.
5. LEGISLATIVE PROGRAM. Rep. Albert announced that on Tues., Jan. 28, the House will consider H. R. 6041, to amend the Davis-Bacon Act to include fringe benefits in computation of wages of contractors' employees. He also stated that "it is anticipated a rule will be granted on the civil rights bill, and if a rule is granted it is expected it will be brought up not later than Fri., Jan. 31," and that "it is hoped and expected it will be passed before Lincoln's Birthday." p. 933

6. ADJOURNED until Mon., Jan. 27. p. 975

SENATE

7. LEGISLATIVE PROCESS. Agreed to without amendment S. Res. 89, to require that at least three hours of debate each day on the floor of the Senate shall be germane to the pending business. pp. 1001-2, 1004, 1018-27
8. GRANTS-IN-AID. Passed as reported S. 855, to provide for more effective utilization of certain Federal loans or grants to urban areas by encouraging better coordination of local review of State and local applications for such loans and grants. pp. 1034-6
9. RECORDS. Passed without amendment H. R. 4801, to authorize certifying officers of agencies to delegate authority to the Administrator of GSA to make certifications on the basis of records transferred to GSA custody. This bill will now be sent to the President. p. 1039
10. PERSONNEL. Passed without amendment H. R. 1959, to permit the transportation, a Government expense, of privately owned automobiles of Federal employees assigned to duty in Alaska. This bill will now be sent to the President. pp. 1038-9
- Passed without amendment S. 1833, to authorize Government agencies to provide quarters, household furniture and equipment, utilities, subsistence, and laundry service to certain Federal employees who occupy Government quarters. pp. 1039-40
- Sen. McGee commended the average Federal employee as "one of the most efficient workers in the world," and inserted a letter commending the service of these employees. pp. 988-9
- Sen. Miller inserted and commended an article "throwing the spotlight on solicitation activities of the Democratic National Committee among Government career employees." p. 1016
11. TAXATION. The "Daily Digest" states that the Finance Committee "concluded action on and ordered favorably reported with amendments H. R. 8363, proposed Revenue Act of 1964." p. D40
12. WHEAT GRADING STANDARDS. Sen. Carlson commended this Department for the development and adoption of new wheat grading standards, stating that with the new standards "the U. S. wheat industry will be in a better position to compete in quality markets and to capture an enlarged share of world cash sales." p. 996

88TH CONGRESS
2D SESSION

H. R. 9739

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 1964

MR. ROSENTHAL introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2.z. (2) (b) of the Federal Insecticide, Fungi-
4 cide, and Rodenticide Act (61 Stat. 163, as amended, 7
5 U.S.C., 1958 ed., Supp. III, 135 (z) (2) (b)) is hereby
6 amended by inserting before the semicolon at the end there-
7 of the following phrase: "other than the registration num-
8 ber assigned to the economic poison".

9 SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C.

1 135a) is hereby amended by deleting the word "and" at
2 the end of section 3.a. (2) (b), deleting the period at the end
3 of section 3.a. (2) (c) and inserting in lieu thereof a semi-
4 colon and the word "and", and adding after section 3.a. (2)
5 (c), a new provision reading as follows: "(d) when re-
6 quired by regulation of the Secretary to effectuate the pur-
7 poses of this Act, the registration number assigned to the
8 article under this Act."

9 SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
10 135b) is hereby amended by changing the word "registrant"
11 wherever it appears in subsection a. and in the first sentence
12 of subsection c. to "applicant for registration" and by delet-
13 ing the remainder of subsection c. and inserting in lieu thereof
14 the following:

15 "If, upon receipt of such notice, the applicant for regis-
16 tration does not make the corrections, the Secretary shall
17 refuse to register the article. The Secretary, in accordance
18 with the procedures specified herein, may suspend or cancel
19 the registration of an economic poison whenever it does not
20 appear that the article or its labeling or other material re-
21 quired to be submitted complies with the provisions of this
22 Act. Whenever the Secretary refuses registration of an
23 economic poison or determines that registration of an eco-
24 nomic poison should be canceled, he shall notify the applicant
25 for registration or the registrant of his action and the reasons

1 therefor. Whenever an application for registration is re-
2 fused, the applicant, within thirty days after service of notice
3 of such refusal, may file a petition requesting that the matter
4 be referred to an advisory committee or file objections and
5 request a public hearing in accordance with this section. A
6 cancellation of registration shall be effective thirty days
7 after service of the foregoing notice unless within such time
8 the registrant (1) makes the necessary corrections; (2) files
9 a petition requesting that the matter be referred to an ad-
10 visory committee; or (3) files objections and requests a
11 public hearing. Each advisory committee shall be composed
12 of experts, qualified in the subject matter and of adequately
13 diversified professional background selected by the National
14 Academy of Sciences and shall include one or more repre-
15 sentatives from land-grant colleges. The size of the com-
16 mittee shall be determined by the Secretary. Members of
17 an advisory committee shall receive as compensation for
18 their services a reasonable per diem, which the Secretary
19 shall by rules and regulations prescribe, for time actually
20 spent in the work of the committee, and shall in addition be
21 reimbursed for their necessary traveling and subsistence
22 expenses while so serving away from their places of resi-
23 dence, all of which costs may be assessed against the peti-
24 tioner, unless the committee shall recommend in favor of
25 the petitioner or unless the matter was referred to the

1 advisory committee by the Secretary. The members shall
2 not be subject to any other provisions of law regarding the
3 appointment and compensation of employees of the United
4 States. The Secretary shall furnish the committee with
5 adequate clerical and other assistance, and shall by rules and
6 regulations prescribe the procedures to be followed by the
7 committee. The Secretary shall forthwith submit to such
8 committee the application for registration of the article and
9 all relevant data before him. The petitioner, as well as
10 representatives of the United States Department of Agri-
11 culture, shall have the right to consult with the advisory
12 committee. As soon as practicable after any such sub-
13 mission, but not later than sixty days thereafter, unless
14 extended by the Secretary for an additional sixty days,
15 the committee shall, after independent study of the data sub-
16 mitted by the Secretary and all other pertinent information
17 available to it, submit a report and recommendation to the
18 Secretary as to the registration of the article, together with
19 all underlying data and a statement of the reasons or basis
20 for the recommendations. After due consideration of the
21 views of the committee and all other data before him, the
22 Secretary shall, within ninety days after receipt of the report
23 and recommendations of the advisory committee, make his
24 determination and issue an order, with findings of fact, with
25 respect to registration of the article and notify the applicant

1 for registration or registrant. The applicant for registra-
2 tion, or registrant, may, within sixty days from the date of
3 the order of the Secretary, file objections thereto and request
4 a public hearing thereon. In the event a hearing is re-
5 quested, the Secretary shall, after due notice, hold such pub-
6 lic hearing for the purpose of receiving evidence relevant and
7 material to the issues raised by such objections. Any report,
8 recommendations, underlying data, and reasons certified to
9 the Secretary by an advisory committee shall be made a part
10 of the record of the hearing, if relevant and material, sub-
11 ject to the provisions of section 7 (c) of the Administrative
12 Procedure Act (5 U.S.C. 1006 (c)). The National Acad-
13 emy of Sciences shall designate a member of the advisory
14 committee to appear and testify at any such hearing with
15 respect to the report and recommendations of such committee
16 upon request of the Secretary, the petitioner, or the officer
17 conducting the hearing: *Provided*, That this shall not pre-
18 clude any other member of the advisory committee from
19 appearing and testifying at such hearing. As soon as practi-
20 cable after completion of the hearing, but not later than ninety
21 days, the Secretary shall evaluate the data and reports before
22 him, act upon such objections and issue an order granting,
23 denying, or canceling the registration or requiring modifica-
24 tion of the claims or the labeling. Such order shall be based

1 only on substantial evidence of record at such hearing, includ-
2 ing any report, recommendations, underlying data, and
3 reason certified to the Secretary by an advisory committee,
4 and shall set forth detailed findings of fact upon which the
5 order is based. In connection with consideration of any
6 registration or application for registration under this section,
7 the Secretary may consult with any other Federal agency or
8 with an advisory committee appointed as herein provided.
9 Notwithstanding the provisions of section 3.c.(4), informa-
10 tion relative to formulas of products acquired by authority of
11 this section may be revealed, when necessary under this
12 section, to an advisory committee, or to any Federal agency
13 consulted, or at a public hearing, or in findings of fact issued
14 by the Secretary. All data submitted to the Secretary or to
15 an advisory committee in support of a petition under this
16 section shall be considered confidential by the Secretary and
17 by such advisory committee. Notwithstanding any other
18 provision of this section, the Secretary may, when he finds
19 that such action is necessary to prevent an imminent hazard
20 to the public, by order, suspend the registration of an
21 economic poison immediately. In such case, he shall give
22 the registrant prompt notice of such action and afford the
23 registrant the opportunity to have the matter submitted to an
24 advisory committee and for an expedited hearing under this
25 section. Final orders of the Secretary under this section

1 shall be subject to judicial review, in accordance with the
2 provisions of subsection d. In no event shall registration of
3 an article be construed as a defense for the commission of
4 any offense prohibited under section 3 of this Act."

5 SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
6 135b) is hereby further amended by redesignating subsec-
7 tions d. and e. as subsections e. and f., and by adding a new
8 subsection d., as follows:

9 "d. In a case of actual controversy as to the validity
10 of any order under this section, any person who will be
11 adversely affected by such order may obtain judicial review
12 by filing in the United States court of appeals for the cir-
13 cuit wherein such person resides or has his principal place
14 of business, or in the United States Court of Appeals for the
15 District of Columbia Circuit, within sixty days after the
16 entry of such order, a petition praying that the order be
17 set aside in whole or in part. A copy of the petition shall
18 be forthwith transmitted by the clerk of the court to the
19 Secretary, or any officer designated by him for that purpose,
20 and thereupon the Secretary shall file in the court the rec-
21 ord of the proceedings on which he based his order, as pro-
22 vided in section 2112 of title 28, United States Code. Upon
23 the filing of such petition, the court shall have exclusive
24 jurisdiction to affirm or set aside the order complained of
25 in whole or in part. The findings of the Secretary with

1 respect to questions of fact shall be sustained if supported
2 by substantial evidence when considered on the record as a
3 whole, including any report and recommendation of an ad-
4 visory committee. If application is made to the court for
5 leave to adduce additional evidence, the court may order such
6 additional evidence to be taken before the Secretary, and to
7 be adduced upon the hearing in such manner and upon such
8 terms and conditions as to the court may seem proper, if such
9 evidence is material and there were reasonable grounds for
10 failure to adduce such evidence in the proceedings below.
11 The Secretary may modify his findings as to the facts and
12 order by reason of the additional evidence so taken, and shall
13 file with the court such modified findings and order. The
14 judgment of the court affirming or setting aside, in whole or
15 in part, any order under this section shall be final, subject to
16 review by the Supreme Court of the United States upon
17 certiorari or certification as provided in section 1254 of
18 title 18 of the United States Code. The commencement of
19 proceedings under this section shall not, unless specifically
20 ordered by the court to the contrary, operate as a stay of an
21 order. The court shall advance on the docket and expedite
22 the disposition of all causes filed therein pursuant to this
23 section.”

24 SEC. 5. The first sentence of section 8.b. of said Act (61
25 Stat. 170; 7 U.S.C. 135f. (b)) is hereby amended by delet-

1 ing that part beginning with the second proviso therein down
2 to, but not including, the period at the end thereof.

3 SEC. 6. Section 3.a.(1) and section 9.a.(1)(b) of
4 said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1),
5 135g.(a)(1)(b)) are hereby amended by changing the
6 phrase "has not been registered" wherever it appears there-
7 in, to read "is not registered".

8 SEC. 7. This Act and the amendments made hereby
9 shall become effective upon enactment, and all existing regis-
10 trations under protest issued under said Federal Insecticide,
11 Fungicide, and Rodenticide Act shall thereupon terminate.

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

By Mr. ROSENTHAL

JANUARY 23, 1964

Referred to the Committee on Agriculture

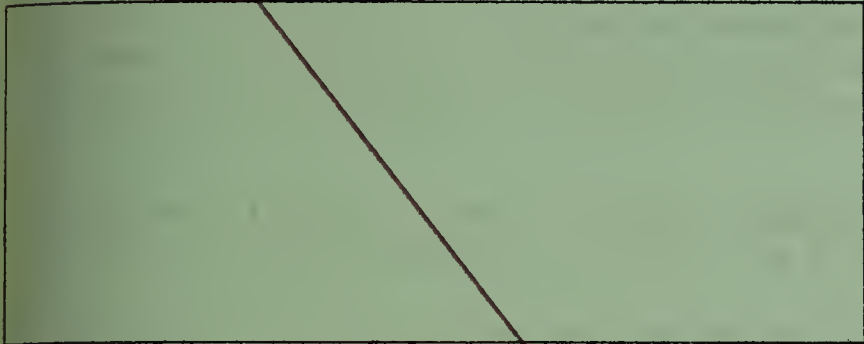
Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Jan. 29, 1964
For actions of Jan. 28, 1964
88th-2nd, No. 14



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HIGHLIGHTS: Sen. Ribicoff announced investigation of effects of pesticides in tobacco. Sens. Talmadge and Russell spoke in support of the Talmadge-Humphrey cotton bill. Sen. McGovern commended accomplishments of food-for-peace program. Senate committee reported tax reduction bill. Rep. Findley urged investigation of wheat sales to Russia. House committee voted to report pesticide labeling bill. p. Purcell introduced wheat bill.

HOUSE

1. PESTICIDES. The Agriculture Committee voted to report (but did not actually report) H. R. 9739, to provide for labeling of economic poisons with registration numbers and to eliminate registration under protest. p. D51
2. TOBACCO RESEARCH. Rep. Cooley announced that the Tobacco Subcommittee of the Agriculture Committee would hold hearings from Wed., Jan. 29 through Fri., Jan. 31, on resolutions to authorize and direct USDA to conduct research into the quality and health factors of cigarette tobacco. p. 1175
3. WHEAT; FOREIGN TRADE. Rep. Findley urged that a complete investigation be made of wheat sales to Russia and charged that the USDA, in cooperation with the

Commerce Department, has disqualified certain vessels from bidding on Public Law 480 shipments, until the wheat shipment problem is solved. pp. 1179-80

4. AREA REDEVELOPMENT Rep. Patman inserted a letter from the ARA Administrator stating that urban projects have not been hurt by the need for funds of rural projects. pp. 1191-2
5. RECREATION. The Irrigation and Reclamation Subcommittee of the Interior and Insular Affairs Committee voted to report to the full committee with amendment H. R. 3194, to authorize Interior to make water available for a permanent pool for recreation purposes at Cochiti Reservoir, Colorado River Storage project. p. D51
6. RECEIPTS AND EXPENDITURES. Rep. Cannon inserted a tabulation of the budget receipts and expenditures for the first half of fiscal year 1964. pp. 1202-3
7. PERSONNEL. By a vote of 357 to 50, passed without amendment H. R. 6041, to amend the Davis-Bacon Act so as to include fringe benefits in computation of wages of contractors' employees engaged in projects for the Government. pp. 1133-72, 1180
8. SUPPLEMENTAL APPROPRIATIONS. Concurred in the Senate amendment, with an amendment, to H. J. Res. 875, the supplemental appropriations bill for fiscal year 1964 for HEW, originally intended to implement the mental retardation program. The Senate amendment added \$216,204,000 for payments to federally impacted school districts, and the House amendment adds \$31,168,000 for student loan funds under the National Defense Education Act; \$430,000 for compliance activities of the Mexican farm labor program; and \$165,000 for salaries and expenses of the Mexican farm labor program, the latter item to be derived by transfer from the farm labor supply revolving fund. The amendments to this bill add items which were included in the supplemental appropriations estimates submitted by the President Jan. 21 (H. Doc. 203). pp. 1172-5

SENATE

9. TAXATION. The Finance Committee reported with amendments H. R. 8363, the tax bill to reduce individual and corporate income taxes and to make certain structural changes with respect to the income tax (S. Rept. 830). p. 1214
10. TOBACCO. Sen. Ribicoff announced continuation of hearings on "Interagency Coordination in Environmental Hazards" on Tues., Feb. 4, on the possible effects on health of pesticides used on tobacco plants, stating that the "Smoking and Health" report "confirms the information we have been gathering that pesticides, used on tobacco plants, end up in detectable quantities in cigarettes." pp. 1223-4
11. COTTON. Sens. Talmadge and Russell spoke in support of, and inserted an article commending, the Talmadge-Humphrey cotton bill. pp. 1226-7
12. FOOD-FOR-PEACE. Sen. Bartlett inserted an article pointing out how the inclusion of fish products in the food-for-peace program can be of benefit to the American fishermen and fishing industry and describing the problems presented by the "rapidly increasing fishery imports." pp. 1208-9

Feb 3, 1964

15. FARM PROGRAM. Rep. Roosevelt commended the President's farm message and expressed his hope that "Congress will act at once in the interest of American consumers, small businessmen, farmers, and other affected areas of the economy" by making a "study of concentration and integration in the vital field of food distribution." pp. 1636-38
16. PESTICIDES. The Agriculture Committee reported without amendment H. R. 9739, to provide for labeling of economic poisons with registration numbers and to eliminate registration under protest (H. Rept. 1125). p. 1642
17. FEDERAL TRADE. Received the annual report of the Federal Trade Commission. p. 1642
18. WHEAT SALES. Rep. Findley criticized this Department for the most recent wheat sales to Russia, urged that sales be stopped, and inserted certain Department budget data which he said revealed the statement by Secretary Freeman in recent speeches that CCC was saving \$800,000 a day in storage and handling charges for grains as a result of the various diverted acreage programs for wheat and feed grains as "phony." pp. 1639-40

ITEMS IN APPENDIX

19. POVERTY. Extension of remarks of Rep. Blatnik commending and inserting an address by Assistant Secretary of HEW Wilbur Cohen's address, "The Elimination of Poverty: A Primary Goal of Public Policy." pp. A461-4
20. TAXATION. Extension of remarks of Sen. Gore inserting an article, "Doubts Over Tax Cut--Some Misgivings are Being Aired by Both Liberal and Conservative Camps." pp. A464-5
21. PRICES. Extension of remarks of Rep. Dingell inserting an article critical of the proposed quality stabilization bill as being "nothing more or less than authorization for plunder by private unregulated interests..." p. A475
22. BUDGET. Extension of remarks of Rep. Curtis inserting an article, "How to Spot False Budget Cuts--Poses of Economy-Mindedness in Congress Often Hide Increases in Federal Spending," with special reference to agricultural appropriations and stating that "Congressman Whitten has compelled Presidents for more than a decade to spend an extra \$100 million a year for the agricultural conservation program." pp. A476-7
Extension of remarks of Rep. Long inserting an article, "Spending Can be Controlled." p. A484
23. BEEF IMPORTS. Extension of remarks of Rep. Dorn and insertion of a S.C. General Assembly resolution opposing importation of foreign beef and urging that an investigation be made looking to limiting the quantity and improving the quality of meat which reaches our markets. p. A490

BILLS INTRODUCED

24. EDUCATION. H. R. 9875, by Rep. Rhodes, Penn., to authorize a 3-year program of grants for construction of veterinary medical education facilities; to Interstate and Foreign Commerce Committee.
S. 2490, by Sen. Hartke, to provide assistance for students in higher education by increasing the amount authorized for loans under the National Defense Education Act of 1958 and by establishing programs for scholarships, loan insurance, and work-study; to Labor and Public Welfare Committee. Re-

marks of author, pp. 1697-8

25. PERSONNEL. S. Res. 293, by Sen. Pearson, investigation of solicitations of certain contributions from government employees for charitable purposes; to Post Office and Civil Service Committee. Remarks of author, pp. 1650-3

BILL APPROVED BY THE PRESIDENT

26. SOUTH PACIFIC. H. J. Res. 779, to authorize appropriations relating to U. S. membership in the South Pacific Commission for 1965 and 1966. Approved January 31, 1964 (Public Law 88-263).

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COMMITTEE HEARINGS FEB. 4:

Food stamp bill, H. Agriculture (exec).

Reports to Congress prior to withdrawal, etc., of forest land of 5,000 acres or more, H. Interior.

Watershed projects, H. Public Works (exec).

Water Pollution Control Act Amendments, H. Public Works.

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REGISTRATION OF PESTICIDE CHEMICALS

FEBRUARY 3, 1964.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COOLEY, from the Committee on Agriculture, submitted the following

R E P O R T

[To accompany H.R. 9739]

The Committee on Agriculture, to whom was referred the bill (H.R. 9739) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

STATEMENT

The purpose of this bill is to end the practice of protest registration whereby the manufacturer of a pesticide can market a product despite Department of Agriculture doubts as to its effectiveness or safety. It also provides a complete appeal system whereby the applicant for registration can appeal the decision of the Department of Agriculture. This legislation was first introduced as H.R. 6828.

NEED FOR THE LEGISLATION

The Federal Insecticide, Fungicide, and Rodenticide Act prohibits interstate commerce in "economic poisons," such as insecticides, herbicides, and plant regulators, unless they have been registered with the Secretary of Agriculture, are properly labeled, not adulterated or misbranded, and meet various other requirements designed to protect the public and assure it of safe and effective products. The act is enforced through criminal penalties under section 8 and seizures under section 9.

The Secretary is required, upon application, to register any economic poison if the poison, its labeling, and other material required to be submitted comply with the requirements of the act.

At present, however, the Secretary is also required to register under protest poisons which do not comply with the requirements of the act if, after he has advised the registrant that the poison does not meet the act's requirements, the registrant insists on registration. In such case the registrant is protected from the effects of failure to register, but not from penalties and seizure if the product is actually misbranded or otherwise out of compliance with the act. The maximum fine is \$500 higher in some cases where the article has been registered under protest. The principal effect of registration under protest is to shift the burden of proof from the registrant to the Government. If the product is not registered, the penalty or seizure provisions can be applied on that ground. If it is registered under protest, the Government has the burden of proving that the product does not comply with the act.

Thus, at present, the Secretary can be required to register a product even though he is convinced that it is ineffective and dangerous to human life. He can proceed against it in such case only after it has moved in interstate commerce, and he then has the burden of proving that it violates the law. The bill would correct this situation and afford greater protection to the public by repealing the authority for registration under protest. In its place the bill provides that applicants dissatisfied with the Secretary's action in refusing or canceling registration may have recourse to advisory committee proceedings, public hearings, and eventually judicial review. Thus the bill affords adequate protection to the public, and protects applicants for registration from arbitrary or ill-advised action by the Department.

Section 2z(2)(b) of the act, at present, provides that any economic poison shall be misbranded, if its labeling bears any reference to registration under the act. The bill would permit the registration number to be shown and authorize the Secretary to require that it be shown. This would enable the user of the product to determine that it had been registered under the act and that the Department had made the necessary investigation and determined that it was truthfully labeled and complied with the requirements of the act. Use of the registration number should not create any inference that the product was recommended or otherwise sponsored by the Government.

HEARINGS

Hearings were held on H.R. 6828, H.R. 6913, and H.R. 7336, all similar bills, on August 21 and 22, 1963, before the Departmental Oversight and Consumer Relations Subcommittee of the House Committee on Agriculture. Representatives of the chemical industry, farm organizations, and the legislative and executive branches of the Government appeared in behalf of the legislation.

Amendments to the legislation were recommended by the Department of Agriculture, the Department of Health, Education, and Welfare, and the Fish and Wildlife Service of the Department of Interior. These suggested amendments, along with proposals made by others, were considered by the subcommittee in executive session.

The full Committee on Agriculture in Executive Session considered the action of the subcommittee in connection with this legislation and also considered S. 1605, the Senate passed bill which had been referred to it. After a study of the recommended changes to S. 1605, the full committee recommended the introduction of a clean bill, H.R. 9739, containing substantially the provisions of S. 1605 together with the

changes recommended by the House committee. H.R. 9739 was considered by the full committee in executive session on January 28, 1964, and voted to be reported to the House.

The differences in the Senate passed bill, S. 1605, and the House bill, H.R. 9739, are shown as follows:

(1) In order to shorten the time for appeal required in connection with denial of registration of a poison the Secretary has been denied the right on his own motion to submit the matter to an advisory committee. This was done by removing the sentence: "The Secretary, on his own motion, may at any time refer such a matter to an advisory committee." from page 3, line 11 of S. 1605. On page 6, line 7, the following language was added: "or with an advisory committee appointed as herein provided." This gives the Secretary the right to consult with an advisory committee during his initial consideration of an application for registration of a commercial poison, but not to refer the matter to an advisory committee after a final determination.

(2) On page 3, line 24, the following language has been added: "unless the committee shall recommend in favor of the petitioner or". This provision assesses cost against the Government if the advisory board rules in favor of the petitioner and against the decision made by the Secretary in connection with an application for registration of a poison. A technical change was made by striking language from lines 1 and 2 of page 4 of the Senate bill.

(3) On page 5, line 20, the following language has been added: "but not later than ninety days,". This language was added in order to set a definite time limitation upon the Secretary's reaching a final determination in connection with a hearing on an appeal of his order denying registration of a commercial poison.

(4) On page 5, line 23, the following language has been added: "or requiring modification of the claims or the labeling". This change was suggested by members of the committee to clarify the meaning of this provision.

(5) On page 6, line 14, the following sentence was inserted:

All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee.

This language was added in order to further protect secret information concerning formulas and packaging methods from disclosure to unauthorized sources by the Advisory Committee appointed by the Secretary in connection with carrying out the provisions of this bill.

SECTION-BY-SECTION EXPLANATION

The first section of the bill permits the labeling of an economic poison to carry its registration number under the act. At present section 2z(2) (b) of the act provides that an economic poison is misbranded if its label bears any reference to registration under the act. The first section of the bill amends section 2z(2)(b) to permit the registration number to be shown.

Section 2 provides that the label on an economic poison must show its registration number when required by regulation of the Secretary of Agriculture.

Section 3 repeals the existing provision which permits registration of an economic poison under protest and provides instead for various appeals from the Secretary's original determination that registration should be refused or canceled. The new procedure is modeled after that contained in section 408 of the Federal Food, Drug, and Cosmetic Act for the determination of tolerances of pesticide chemicals on raw agricultural commodities. Under the new procedure whenever the Secretary refused registration or determined that registration should be canceled the applicant or registrant would be notified of that action and the reasons therefor. The applicant would then have 30 days to request reference to an advisory committee or to file objections and request a public hearing. Each advisory committee would consist of qualified experts selected by the National Academy of Sciences. The size of the committee would be determined by the Secretary and members would receive a reasonable per diem for their services, plus traveling and subsistence expenses, such costs being assessed against the party requesting reference to the advisory committee. The committee would submit recommendations to the Secretary within 60 days after reference, and the Secretary within 90 days thereafter would notify the applicant or registrant of his determination. The applicant would then have 60 days to file objections and request a public hearing. Following the hearing the Secretary would issue his order granting, denying, or canceling registration, issuing such determination within 90 days of the the hearing. The Secretary was given permission to select an advisory committee to consult with during the period of his initial determination of whether an economic poison should be granted a registration number or not.

In order to protect the formulas and packaging methods of the various applicants who apply for registration of a poison which they wish to market, language has been incorporated that will compel members of the advisory committee who advised the Secretary to keep all information divulged to them secret. There is language in the present act that forces such secrecy on all persons who come in contact with such information and it was only fair that these provisions should clearly be applicable to members of the advisory committee.

If necessary to prevent an imminent hazard to the public, the Secretary could suspend registration of an economic poison immediately and afford the registrant the opportunity for reference to an advisory committee and an expedited hearing following such suspension.

Section 4 adds a new section d to section 4 of the act to provide for judicial review of the Secretary's orders by petition to an appropriate U.S. court of appeals within 60 days after entry of the order. The court would then have exclusive jurisdiction to affirm or set aside the order. The Secretary's findings of fact would be sustained if supported by substantial evidence when considered on the record as a whole.

Section 5 strikes out the provision of section 8 for higher maximum fines and automatic termination of registration in the case of offenses of which the registrant has been warned at the time of registration under protest. In view of repeal by section 3 of the provision for registration under protest, the provision repealed by this section would no longer have any meaning.

Section 6 makes clarifying changes in sections 3a(1) and section 9a(1)(b) of the act, making it clear that those sections apply to an

economic poison which is not registered, without regard to whether it may at some time have been registered. Section 6 substitutes "is not registered" for "has not been registered" in each section. Section 3a(1), as thus amended, prohibits interstate commerce in any economic poison which "is not registered," while section 9a(1)(b), as thus amended, provides for seizure of any economic poison which "is not registered."

Section 7 provides that the bill will become effective on enactment, and makes it clear that all existing registrations under protest will then terminate.

DEPARTMENTAL REPORTS

The Department of Agriculture and the Department of Health, Education, and Welfare submitted reports on H.R. 6828 and related bills. These reports are applicable to H.R. 9739 and are submitted as follows:

DEPARTMENT OF AGRICULTURE,
Washington, D.C.

HON. HAROLD D. COOLEY,
*Chairman, Committee on Agriculture,
House of Representatives.*

DEAR MR. CHAIRMAN: We wish to thank you for your letter of June 19, 1963, giving us the opportunity to report on H.R. 6828, entitled "A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes."

The bill would permit the labels of economic poisons registered under the act to bear the registration numbers and would authorize the Secretary of Agriculture to require by regulation that registration numbers appear on such labels. It would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or canceling registrations, or requiring modification of claims or labeling of registered economic poisons. Provision would be made for referral of the question of the eligibility of an economic poison for registration to an advisory committee; for public hearing, if requested, with respect to the Secretary's order issued after consideration of the committee and other data; and for judicial review of the order issued by the Secretary after such hearing.

In fulfilling its responsibilities under the act, this Department is hampered by a provision in the act which gives the applicant the right to demand and receive registration under protest when regular registration is denied, even though the denial is based upon a hazard to the public involved in its use. The net effect of a registration under protest is to shift the burden of proof from the applicant to the Department. Thus a chemical formulation not acceptable to the Department for registration might be marketed for an extended period on a "registration under protest" basis before proof of its harmfulness could be developed. The intent of H.R. 6828 is to eliminate registration under protest and to give this Department authority to deny or cancel any registration or require modification of claims or labeling in any case, after opportunity for referral of the matter to an advisory committee and a public hearing, but with authority for immediate suspension of any registration when the Secretary of Agriculture finds

that such action is necessary to prevent an imminent hazard to the public or any portion thereof.

This Department recommends enactment of the bill if the following changes are made.

In section 3 of the bill, page 3, line 7, after "Secretary.", insert the following new sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory committee." It is believed that this authority in the Secretary is desirable.

In section 3 of the bill, page 3, line 19, preceding the period, insert the following: ", all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition". This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

The bill provides that all data submitted to the Secretary or an advisory committee shall be considered confidential until final action is taken concerning registration of the product. However, the bill also provides for such data to be included in the record at the public hearing provided for in the bill. To eliminate this apparent inconsistency, it is suggested that in section 3 of the bill, page 5, lines 20-21, the phrase "final action is taken concerning registration of the product." be deleted and the following be substituted therefor: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him." In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". It is contemplated that under this language the Secretary would be authorized to make such data available to other executive agencies that have an official interest.

Since the provisions of the act for registration under protest would be deleted by the bill, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bill become effective. However, to avoid any possible question in this respect, it is proposed that in section 7 of the bill, page 8, line 16, the following be inserted preceding the periods: ", and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate".

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 21, 1963.

HON. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of June 19, 1963, for a report on H.R. 6828, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

The two objectives of this bill—objectives that we fully endorse—are stated in its title. Under present law, if the Secretary of Agriculture determines that an economic poison offered for registration under the Federal Insecticide, Fungicide, and Rodenticide Act would not comply with the various substantive requirements of the act, he still must, if the applicant insists, register the article though “under protest,” even when the apparent violation is one that constitutes a hazard to the public health. Likewise, if an economic poison is regularly registered, the Secretary can convert the registration into a registration “under protest” but cannot cancel it outright. And, since the label of the article bears no reference to registration—it is deemed misbranded if it does—purchasers are not apprised of its protested status. The holder of an article registered under protest does incur the risk of greater penalties and automatic termination of the registration in the event of conviction for a violation of the act, but in order to achieve this, the Government would first have to carry the burden of proving beyond a reasonable doubt noncompliance with the act’s substantive requirements, such as labeling giving adequate directions for use and adequate warnings to prevent injury. The burden should, we think, be on the manufacturer to show, before an economic poison may be registered, that the article may be safely and effectively used under the proposed labeling, so that on the one hand an article may be marketed in reliance on the registration so long as it is in effect and the article and its labeling are the same as that which has been registered and, on the other hand, deviation from the registered article or its labeling will per se constitute a violation.

The present bill would—in addition to authorizing the Secretary to require the label of the economic poison to bear a registration number—substitute for the present protest-registration procedure detailed provisions that would authorize the Secretary to refuse registration, or to cancel the registration (or require modification of the labeling), of an economic poison that he considers to be violative of the act, subject to the applicant’s right to have the matter referred to an advisory committee of experts and to have a reconsidered decision of the Secretary after the report of the advisory committee has been obtained, and subject to the right of any person adversely affected by such a reconsidered decision to have an opportunity for public hearing and for judicial review of the Secretary’s final decision on the basis of the hearing record. (Pending referral to an advisory committee and hearing, the Secretary would be empowered to suspend registration summarily if found necessary to prevent an imminent hazard to the public.)

These provisions would carry out procedurally two of the recommendations (i.e., recommendations D. 1 and 2) in the recent report of the President’s Science Advisory Committee on the “Use of Pesticides.” We defer to the view of the Secretary of Agriculture as to whether these provisions are adequate, not only to do away with registration under protest but, as above suggested, to put the burden on the applicant to prove compliance with the substantive requirements of the act as to safety and effectiveness before the article may be registered, instead of placing the burden, in the last analysis, on the Secretary to prove that the article does not comply before he may refuse registration. We believe, however, that in any event certain amendments to the bill are needed from the point of view of the impact of the bill on this Department.

1. *Amendments to clarify, extend, and improve the relationship between the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act with respect to economic poisons that may leave a residue in or on food*

The Food, Drug, and Cosmetic Act provides, through various regulatory procedures, for premarketing clearance for safety, including establishment of safe tolerances, for extraneous substances in or on food (including feed) that are either intended as components of food or the use of which may reasonably be expected to result in leaving a residue in food. If such a substance is present in or on food at the time of, or subsequent to, introduction of the food in interstate commerce, the food is deemed unsafe, and hence adulterated, unless the use of the additive and the amount involved are sanctioned by a clearance regulation then in effect or are exempted by the act or regulation. Chemicals that are "economic poisons" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act may be subject to one of two of these premarketing clearance procedures under the Food, Drug, and Cosmetic Act, depending upon whether the chemical is used in the production, storage, or transportation of crops or other raw agricultural commodities—in which event it is referred to as a "pesticide chemical" subject to the clearance procedure of the pesticide chemicals amendment—or is used otherwise, in which event it is, generally, subject to the clearance procedure of the Food Additives Amendment of 1958 as a "food additive" (unless it is classified as a color additive).

In the case of "pesticide chemicals" as above defined, where in the opinion of the Department of Agriculture the proposed use of the chemical in accordance with label directions will leave a residue on a raw agricultural commodity, that Department will ordinarily delay registration until an applicable tolerance or exemption has been established under the Food, Drug, and Cosmetic Act, on the ground that until the establishment of such a tolerance or exemption it cannot be determined whether there will be a violation of the provisions of Federal Insecticide, Fungicide, and Rodenticide Act, which deem an economic poison misbranded if the labeling does not contain necessary directions for use "adequate for the protection of the public" or if the label does not contain necessary warning or caution statements "adequate to prevent injury to living man and other * * * animals * * *." (See Regs., 7 CFR 363.11.) We understand that extension of this procedure to situations where an economic poison offered for registration is intended for use in connection with food other than raw agricultural commodities is under consideration, though not as yet in effect. However, we assume that, under present law, the applicant could insist upon registration without awaiting a determination by this Department under the Food, Drug, and Cosmetic Act, though in such cases he might have to accept a registration under protest.

Whatever the basis for the above-mentioned procedure under Federal Insecticide, Fungicide, and Rodenticide Act in its present form, with its escape hatch of registration under protest, we seriously doubt that, under the amendments proposed by the bill, the Secretary of Agriculture would be authorized to delay his decision, initially or otherwise, on the ground that there has been no determination under the Food, Drug, and Cosmetic Act. The provisions of the bill, with

their built-in time limits, emphasize the desirability of expeditious procedure. Moreover, even if the Secretary should manage to defer his decision with respect to registration until a tolerance or exemption under the Food, Drug, and Cosmetic Act has been granted or denied, this would apparently not, as the bill is written, require or authorize him to deny registration simply on the basis of the decision reached under the Food, Drug, and Cosmetic Act; nor could the Secretary, after registration has been granted, cancel such registration simply on the basis of the decisions reached under the Food, Drug, and Cosmetic Act, such as a modification of a previously established tolerance. The hearing provisions of the bill, particularly, seem to contemplate an independent administrative decision of the Secretary of Agriculture (subject to judicial review on the record) "based only on substantial evidence of record at such hearing" (including any report of an expert advisory committee appointed under the bill), and the grounds on which the decision would have to be based would be failure to comply with substantive provisions, including those relating to safety, of Federal Insecticide, Fungicide, and Rodenticide Act rather than with applicable standards or regulations under the Food, Drug, and Cosmetic Act. This involves the risk of duplicative, and even dichotomous, decisions of the two departments contrary to their mutual desire and contrary to the public interest.

The bill is therefore in need of amendment to prevent these results and to formalize in law, perfect, and extend to all foods the now-existing procedure applied under Federal Insecticide, Fungicide, and Rodenticide Act with respect to economic poisons used in connection with raw agricultural commodities. This could be accomplished by amendments as follows:

(a) A requirement that an application for registration of an economic poison be accompanied by a satisfactory method of analysis which could be used to determine the presence or absence of residues in food, if the economic poison is intended for use in the production, handling, transportation, or storage of food, or for some other use that may reasonably be expected to result in leaving a residue in food when used as directed or under reasonably foreseeable conditions of use. Such an analytical method is needed both to determine whether the article should be registered on a "no residue" basis and, after such registration, whether its use bears out the expectation of "no residue."

(b) In the case of an economic poison which is intended for a use described in the preceding paragraph, a requirement that the application for registration be accompanied by full reports of adequate scientific investigations as to the amount of residues remaining in or on food.

(c) A requirement that an economic poison may not be registered unless and until this Department has certified a finding either (1) that there is no reasonable likelihood that the article will result in a residue in or on food (at or after the introduction of the food into interstate commerce), or (2) that the residue likely to result will not be deemed unsafe under the Food, Drug, and Cosmetic Act (because of a tolerance or exemption we have established, or because of other facts stated in the certification). Provision should also be made for mandatory cancellation of the registration upon certification by this Department that the earlier findings are no longer applicable by reason of changes in the tolerance or exemption previously established or of other action under the Food, Drug, and Cosmetic Act, or by

reason of actual experience as to the residues which result from the use of the economic poison.

(d) The standard to be applied in determining whether a chemical should be registered is the amount of residue, if any, in or on food, that is likely to result if the chemical is used in accordance with directions or otherwise under reasonably foreseeable conditions of use. The standard to be applied in determining whether registration should be canceled is the amount of residue that is resulting from actual use of the chemical, either as directed, or under other conditions of actual use that may reasonably be expected to be followed in practice to a substantial extent.

We are enclosing draft language to carry out these recommendations.

2. Amendments to make information available to other agencies concerned

We believe that the confidentiality provisions of the bill in section 3 could be a bar to proper administration, and we therefore not only endorse the recommendation in the Secretary of Agriculture's comments dealing with the proposed amendments of lines 20 and 21 on page 5 of the bill, but also recommend that the law make a specific provision, along the lines of an amendment enclosed herewith, to make it clear that the Secretary of Agriculture is not barred from providing information submitted to him to any other Federal agency consulted.

Before closing this report, we should like to note that the President has asked the responsible agencies to implement the recommendations in the Science Advisory Committee's report, including in such implementation the preparation of proposals for submission by him to Congress.

With respect to economic poisons that leave no residue in or on food but have other implications with respect to public health, we are currently engaged in evaluating the statement in the report of that committee that "decisions on registration, clearly related to health, should be the responsibility of the Department of Health, Education, and Welfare," and the committee's recommendation B. 4, that the "Secretaries of Agriculture, Interior, and Health, Education, and Welfare review and define their roles in the registration of pesticides that are not present on food, but that may impinge on fish and wildlife or come into intimate contact with the public." Additional proposals for the amendment of FIFRA could eventuate in the light of these committee recommendations. We also intend to review the need for special controls over especially hazardous persistent economic poisons, whether used in connection with food or otherwise, and the question whether the availability of a new and less hazardous substance should be ground for changing the status of a previously registered article.

At this time, we recommend, for the above-stated reasons, the enactment of this bill, modified in accordance with the proposed amendments enclosed herewith which would carry out the specific recommendations of our report.

We are advised by the Bureau of the Budget that while there is no objection to the submission of this report from the standpoint of the administration's program, the matter of relationships between the food and drug and pesticide registration programs is still under study

in the executive branch and a final decision will be reached thereon as soon as possible.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

PROPOSED AMENDMENTS TO THE BILL RE ECONOMIC POISONS
LEAVING RESIDUES IN OR ON FOOD

1. On page 6, change lines 15 and 16 to read as follows: "tions d. and e. as subsections f. and g., and by inserting before such redesignated subsections the following new subsections, as follows:."

2. On page 6, line 18, insert "subsection c. of" after "under."

3. Strike out the closing quotation marks on page 8, line 6, and insert between lines 6 and 7 the following:

"e. (1) The provisions of this subsection shall apply notwithstanding any other provisions of this Act.

"(2) For the purposes of this section, the registration of an economic poison shall not be valid with respect to any change from the claims therefor or the labeling or composition thereof as described in the application upon which such registration is based, except upon the filing of a supplement to such application in accordance with such change and issuance of an order confirming such registration: *Provided*, That no such supplement need be filed with respect to a change that is not significant from the standpoint of safety or effectiveness or from the standpoint of the residue of the economic poison remaining in or on food. As used in the following paragraphs of this subsection, the term "application for registration" includes a proposed supplement to an application on which a previous registration is based and a request pursuant to subsection g. for continuation of a registration, and the terms "register" and "registration" include confirmation or continuation of registration pursuant to such a supplement or pursuant to such a request.

"(3) A copy of every application for registration of an economic poison, and of any statement or other data filed in connection therewith, shall be transmitted by the Secretary to the Secretary of Health, Education, and Welfare, together with an opinion of the Secretary of Agriculture as to whether, on the basis of the data before him, such economic poison, when used as directed or otherwise under reasonably foreseeable conditions of use, is likely to result in a residue in or on food and, if so, the amount of such residue.

"(4)(A) An economic poison shall not be registered unless and until the Secretary of Health, Education, and Welfare has certified, on the basis of the data before him and after appropriate consideration of the opinion of the Secretary of Agriculture submitted under paragraph (3), that he finds (i) that such economic poison, when used in accordance with directions or otherwise under reasonably foreseeable conditions of use, is not likely to result in a residue in or on food (at or after the introduction thereof into interstate commerce), or (ii) that the residue likely to result from such use will, by reason of its conformance with a tolerance or exemption established under the Federal Food, Drug, and Cosmetic Act or by reason of any other facts found and stated in such certification, not be deemed unsafe within the meaning of sections 406, 408, 409, or 706 of such Act.

"(B) Such certification shall in any event be refused unless the application and other data submitted to the Secretary of Health, Education, and Welfare under paragraph (3) or submitted to him directly by the applicant include the following:

"(i) Full data showing the chemical identity and composition of the economic poison.

"(ii) Practicable and reliable methods of examination for determining the amount of residue, if any, of such economic poison in or on food if such economic poison is intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, or is intended for any use that may reasonably be expected to result, directly or indirectly, in its leaving a residue in or on food when used as directed or otherwise under reasonably foreseeable conditions of use.

"(iii) Full reports of adequate investigations (made in accordance with the methods referred to in clause (ii)) showing the amount of such residue, if any, remaining in or on food when such economic poison is used as directed or otherwise under reasonably foreseeable conditions of use, except that such investigations, if not made, may be dispensed with by such Secretary if such economic poison is not intended for a use described in clause (ii).

"(5) Whenever the Secretary of Health, Education, and Welfare certifies that he finds (A) that, by reason of action (specified in such certification) taken under sections 406, 408, 409, or 706 of the Federal Food, Drug, and Cosmetic Act, as the case may be, the probable residue of an economic poison in or on food assumed as a basis for a prior registration of an economic poison would now be deemed unsafe within the meaning of such section, or (B) that the actual use of such economic poison as directed, or under other conditions of actual use that may reasonably be expected to continue to be followed in practice to a substantial extent, has resulted in leaving in or on food, at or after the introduction thereof in interstate commerce, a residue that for reasons stated in such certification is deemed unsafe within the meaning of any such section of such Act, the Secretary of Agriculture shall cancel such registration on thirty days' notice, except that, if the order of certification of the Secretary of Health, Education, and Welfare includes a finding of imminent hazard to the public health pursuant to clause (C) of the proviso to paragraph (6) of this subsection, such registration shall be suspended without prior notice pending final action of such Secretary.

"(6) Certifications, or refusals of certification, of the Secretary of Health, Education, and Welfare under this subsection shall be made by order. The procedure for the issuance, amendment, or revocation of such orders, including opportunity for hearing on the record to any person adversely affected by the Secretary's action or proposed action, shall be prescribed by such Secretary by regulations and shall follow as nearly as practicable the procedure governing orders of the Secretary of Agriculture set forth in subsection c.: *Provided*, that (A) the question whether or on what terms a tolerance, or exemption from the requirement of a tolerance, should be established, modified, or revoked under any provision of the Federal Food, Drug, and Cosmetic Act shall not be put in issue in any proceeding under this section; (B) the referral of a matter to an advisory committee shall not be manda-

tory on the Secretary of Health, Education, and Welfare unless requested by the applicant or registrant; and (C) where such Secretary finds that there is an imminent hazard to the public health he may immediately make the certification provided for in paragraph (5), in which event he shall give prompt notice to the registrant and afford him the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this paragraph (6) and shall, after such opportunity, issue a final order confirming, modifying, or setting aside his earlier order. Final orders under this paragraph shall be subject to judicial review on the record in accordance with the procedure set forth in subsection d. of this subsection, and for that purpose the term "Secretary" as used in subsection d. shall mean the Secretary of Health, Education, and Welfare. Notwithstanding the foregoing provisions of this paragraph, the two Secretaries may, to the extent they deem it practicable and in the interest of efficiency and convenience of the parties, provide by joint or parallel regulations for joint hearings before them, in which event judicial review of such orders may be initiated by a single petition.

"(7) As used in this subsection, the term 'residue' includes the breakdown products of an economic poison in foods; and the term 'food' means such term as defined in the Federal Food, Drug, and Cosmetic Act."

4. Change the two sentences beginning on page 5, line 16, to read as follows: "All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary, by any other Federal agency officially consulted by the Secretary in connection therewith, and by such advisory committee until the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him. Until such action such data shall not be revealed to any person other than those authorized by the Secretary, or by an advisory committee in the carrying out of the official duties under this section, or by the head of such other Federal agency."

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

AN ACT To regulate the marketing of economic poisons and devices, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term “economic poison” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

b. The term “device” means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pest as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom.

c. The term “insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term “fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

e. The term “rodenticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

f. The term “herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term “nematocide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

h. The term “plant regulator” means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

i. The term “defoliant” means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

j. The term “desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

k. The term “nematode” means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies, covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

l. The term “weed” means any plant which grows where not wanted.

m. The term “insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees,

flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders mites, ticks, centipedes, and wood lice.

n. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

o. The term "ingredient statement" means either—

(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

p. The term "active ingredient" means—

(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

q. The term "inert ingredient" means an ingredient which is not active.

r. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

s. The term "person" means any individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

t. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

u. The term "Secretary" means the Secretary of Agriculture.

v. The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

w. The term "label" means the written, printed, or graphic matter, on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

x. The term "labeling" means all labels and other written, printed, or graphic matter—

(1) upon the economic poison or device or any of its containers or wrappers;

(2) accompanying the economic poison or device at any time;

(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current

official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons.

y. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

z. The term "misbranded" shall apply—

(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) to any economic poison—

(a) if it is an imitation of or is offered for sale under the name of another economic poison;

(b) if its labeling bears any reference to registration under this Act *other than the registration number assigned to the economic poison*;

(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use or;

(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided*, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

PROHIBITED ACTS

SEC. 3. a. It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

(1) Any economic poison which [has not been] *is not* registered pursuant to the provisions of section 4 of this Act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided*, That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

(b) the name, brand, or trade-mark under which said article is sold; [and]

(c) the net weight or measure of the content: *Provided*, That the Secretary may permit reasonable variations[.]; and

(d), *when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.*

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 6 of this Act, unless the label shall bear, in addition to any other matter required by this Act—

(a) the skull and crossbones;

(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

(c) a statement of an antidote for the economic poison.

(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as

provided by regulations issued in accordance with this Act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored, unless it has been so colored or discolored: *Provided*, That the Secretary may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded or any device which is misbranded.

b. Notwithstanding any other provision of this Act, no article shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

c. It shall be unlawful—

(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Act or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this Act;

(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this Act;

(3) for any person to give a guaranty or undertaking provided for in section 7 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 7 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

(4) for any person to use for his own advantage or to reveal, other than to the Secretary, or officials or employees of the United States Department of Agriculture, or other Federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Secretary may prescribe, any information relative to formulas of products acquired by authority of section 4 of this Act.

REGISTRATION

SEC. 4 a. Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a desig-

nation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the [registrant] *applicant for registration* shall file with the Secretary a statement including—

(1) the name and address of the [registrant] *applicant for registration* and the name and address of the person whose name will appear on the label, if other than the [registrant] *applicant for registration*;

(2) the name of the economic poison;

(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

(4) if requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based.

b. The Secretary, whenever he deems it necessary for the effective administration of this Act, may require the submission of the complete formula of the economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this Act, he shall register it.

c. If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Act, he shall notify the [registrant] *applicant for registration* of the manner in which the article, labeling, or other material required to be submitted fail to comply with the Act so as to afford the [registrant] *applicant for registration* an opportunity to make the corrections necessary. [If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that it be registered, the Secretary shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of this Act. In order to protect the public, the Secretary, on his own motion, may at any time, cancel the registration of an economic poison and in lieu thereof issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under section 3 of this Act.] If, upon receipt of such notice, the *applicant for registration* does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the *applicant for registration* or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a

petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: Provided, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, under-

lying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to the Secretary or to an advisory committee in support of the petition under this section shall be considered confidential by the Secretary and by such advisory committee. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act.

d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

[d.] *e.* Notwithstanding any other provision of this Act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this Act.

[e.] *f.* The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect.

BOOKS AND RECORDS

SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

ENFORCEMENT

SEC. 6 a. The Secretary (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of this Act, including the collection and examination of samples of economic poisons and devices subject to this Act and the determination and establishment of suitable names to be used in the ingredient statement. The Secretary is in addition, authorized after opportunity for hearing—

(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 3a(4) of this Act.

b. The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe the regulations for the enforcement of section 10 of this Act.

c. The examination of economic poisons or devices shall be made in the United States Department of Agriculture or elsewhere as the Secretary may designate for the purpose of determining from such examination whether they comply with the requirements of this Act,

and if it shall appear from any such examination that they fail to comply with the requirements of this Act, the Secretary shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Secretary it appears that the provisions of this Act have been violated by such person, then the Secretary shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided*, That nothing in this Act shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

e. The Secretary shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

EXEMPTIONS

Sec. 7a. The penalties provided for a violation of section 3a of this Act shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, designating this Act. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Secretary shall permit such person to copy all records showing the transactions in and movement of the articles;

(3) to public officials while engaged in the performance of their official duties;

(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary.

PENALTIES

SEC. 8. a. Any person violating section 3a(1) of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000.

b. Any person violating any provision other than section 3a(1) of this Act shall be guilty of a misdemeanor and shall upon conviction be

fined not more than \$500 for the first offense, and on conviction for each subsequent offense be fined not more than \$1,000 or imprisoned for not more than one year, or both such fine and imprisonment: *Provided*, That an offense committed more than five years after the last previous conviction shall be considered a first offense[: *And provided further*, That in any case where a registrant was issued a warning by the Secretary pursuant to the provisions of section 4c of this Act, he shall in each instance upon conviction for an offense concerning which he had been so warned be fined not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically]. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this Act.

c. Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or revels information relative to formulas of products acquired under the authority of section 4 of this Act, he shall be fined not more than \$10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

d. When construing and enforcing the provisions of this Act, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SEIZURES

SEC. 9 a. Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

(1) in the case of an economic poison—

- (a) if it is adulterated or misbranded;
- (b) if it [has not been] *is not* registered pursuant to the provisions of section 4 of this Act;
- (c) if it fails to bear on its label the information required by this Act; or
- (d) if it is a white powder, economic poison, and is not colored as required under this Act; or

(2) in the case of a device if it is misbranded.

b. If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of this Act or of the laws of the jurisdiction in which it is sold: *Provided*, That upon payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such

libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

c. When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

IMPORTS

SEC. 10. The Secretary of the Treasury shall notify the Secretary of Agriculture of the arrival of economic poisons and devices offered for importation and shall deliver to the Secretary of Agriculture, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanding, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission of delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

DELEGATION OF DUTIES

SEC. 11. All authority vested in the Secretary by virtue of the provisions of this Act may with like force and effect be executed by such employees of the United States Department of Agriculture as the Secretary may designate for the purpose.

AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES

SEC. 12 a. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act. In order to carry out the provisions of this Act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such Act are authorized to be made available.

b. The Secretary is authorized from the funds appropriated for this Act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this Act.

COOPERATION

SEC. 13. The Secretary is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

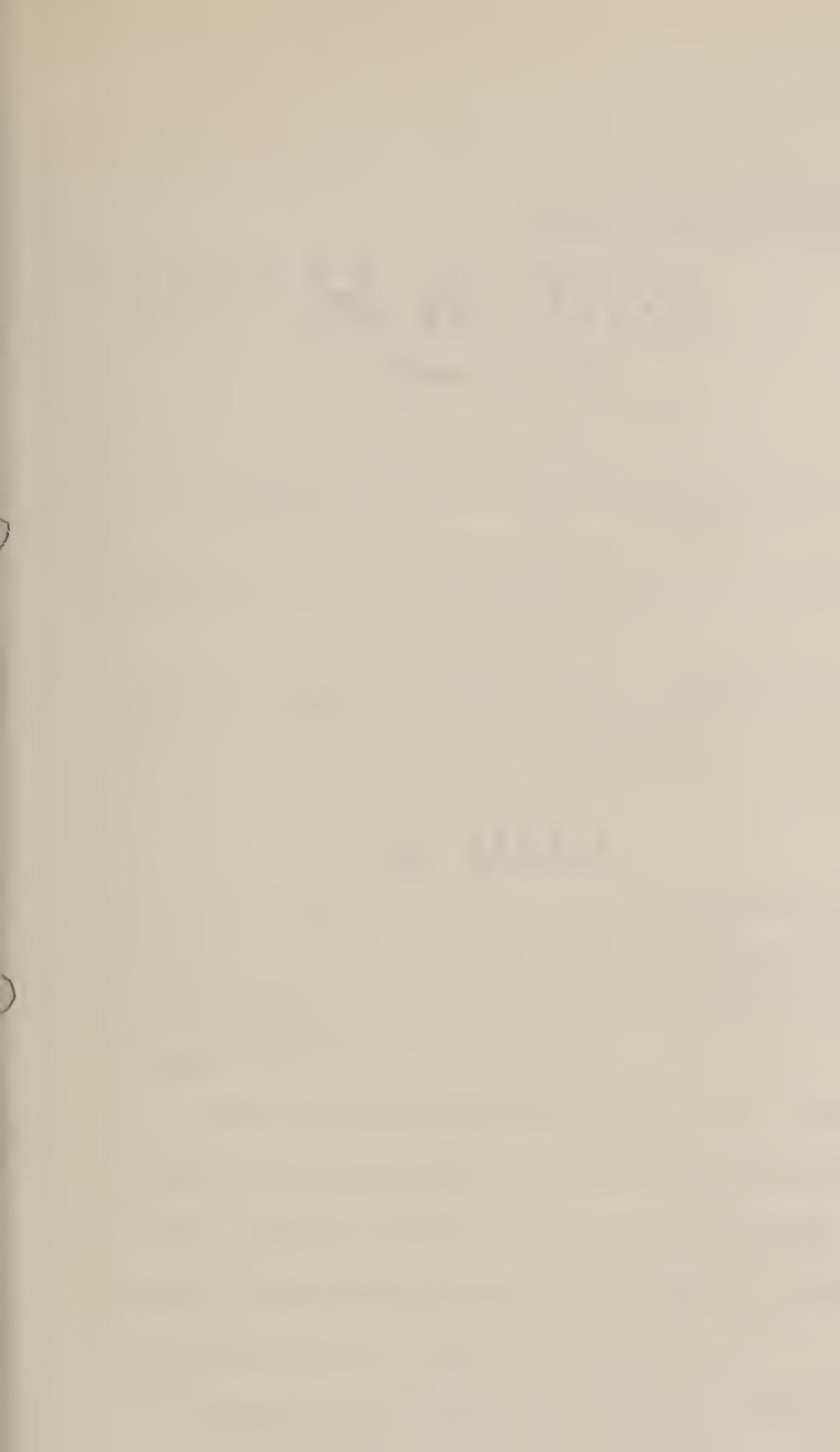
SEPARABILITY

SEC. 14. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 15. All provisions of this Act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", shall take effect upon enactment, and sections 3, 8, 9, and 10 of this Act shall take effect as follows: (1) As to devices, upon enactment; (2) as to rodenticides and herbicides, six months after enactment; and (3) as to insecticides, fungicides, and all other economic poisons, one year after enactment; *Provided*, That the Secretary, upon application, may at any time within one year after sections 3, 8, 9, and 10 of this Act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardships, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this Act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this Act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provisions of the Insecticide Act of 1910.

SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U.S.C. 121-134), is hereby repealed one year after the date of the enactment of this Act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments, or deliveries of insecticides and fungicides exempted by the Secretary under section 15.



88TH CONGRESS
2D SESSION

H. R. 9739

[Report No. 1125]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 1964

Mr. ROSENTHAL introduced the following bill; which was referred to the Committee on Agriculture

FEBRUARY 3, 1964

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2.z. (2) (b) of the Federal Insecticide, Fungi-
4 cide, and Rodenticide Act (61 Stat. 163, as amended, 7
5 U.S.C., 1958 ed., Supp. III, 135 (z) (2) (b)) is hereby
6 amended by inserting before the semicolon at the end there-
7 of the following phrase: "other than the registration num-
8 ber assigned to the economic poison".

9 SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C.

1 135a) is hereby amended by deleting the word “and” at
2 the end of section 3.a. (2) (b), deleting the period at the end
3 of section 3.a. (2) (c) and inserting in lieu thereof a semi-
4 colon and the word “and”, and adding after section 3.a. (2)
5 (c), a new provision reading as follows: “(d) when re-
6 quired by regulation of the Secretary to effectuate the pur-
7 poses of this Act, the registration number assigned to the
8 article under this Act.”

9 SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
10 135b) is hereby amended by changing the word “registrant”
11 wherever it appears in subsection a. and in the first sentence
12 of subsection c. to “applicant for registration” and by delet-
13 ing the remainder of subsection c. and inserting in lieu thereof
14 the following:
15 “If, upon receipt of such notice, the applicant for regis-
16 tration does not make the corrections, the Secretary shall
17 refuse to register the article. The Secretary, in accordance
18 with the procedures specified herein, may suspend or cancel
19 the registration of an economic poison whenever it does not
20 appear that the article or its labeling or other material re-
21 quired to be submitted complies with the provisions of this
22 Act. Whenever the Secretary refuses registration of an
23 economic poison or determines that registration of an eco-
24 nomic poison should be canceled, he shall notify the applicant
25 for registration or the registrant of his action and the reasons

1 therefor. Whenever an application for registration is re-
2 fused, the applicant, within thirty days after service of notice
3 of such refusal, may file a petition requesting that the matter
4 be referred to an advisory committee or file objections and
5 request a public hearing in accordance with this section. A
6 cancellation of registration shall be effective thirty days
7 after service of the foregoing notice unless within such time
8 the registrant (1) makes the necessary corrections; (2) files
9 a petition requesting that the matter be referred to an ad-
10 visory committee; or (3) files objections and requests a
11 public hearing. Each advisory committee shall be composed
12 of experts, qualified in the subject matter and of adequately
13 diversified professional background selected by the National
14 Academy of Sciences and shall include one or more repre-
15 sentatives from land-grant colleges. The size of the com-
16 mittee shall be determined by the Secretary. Members of
17 an advisory committee shall receive as compensation for
18 their services a reasonable per diem, which the Secretary
19 shall by rules and regulations prescribe, for time actually
20 spent in the work of the committee, and shall in addition be
21 reimbursed for their necessary traveling and subsistence
22 expenses while so serving away from their places of resi-
23 dence, all of which costs may be assessed against the peti-
24 tioner, unless the committee shall recommend in favor of
25 the petitioner or unless the matter was referred to the

1 advisory committee by the Secretary. The members shall
2 not be subject to any other provisions of law regarding the
3 appointment and compensation of employees of the United
4 States. The Secretary shall furnish the committee with
5 adequate clerical and other assistance, and shall by rules and
6 regulations prescribe the procedures to be followed by the
7 committee. The Secretary shall forthwith submit to such
8 committee the application for registration of the article and
9 all relevant data before him. The petitioner, as well as
10 representatives of the United States Department of Agri-
11 culture, shall have the right to consult with the advisory
12 committee. As soon as practicable after any such sub-
13 mission, but not later than sixty days thereafter, unless
14 extended by the Secretary for an additional sixty days,
15 the committee shall, after independent study of the data sub-
16 mitted by the Secretary and all other pertinent information
17 available to it, submit a report and recommendation to the
18 Secretary as to the registration of the article, together with
19 all underlying data and a statement of the reasons or basis
20 for the recommendations. After due consideration of the
21 views of the committee and all other data before him, the
22 Secretary shall, within ninety days after receipt of the report
23 and recommendations of the advisory committee, make his
24 determination and issue an order, with findings of fact, with
25 respect to registration of the article and notify the applicant

1 for registration or registrant. The applicant for registra-
2 tion, or registrant, may, within sixty days from the date of
3 the order of the Secretary, file objections thereto and request
4 a public hearing thereon. In the event a hearing is re-
5 quested, the Secretary shall, after due notice, hold such pub-
6 lic hearing for the purpose of receiving evidence relevant and
7 material to the issues raised by such objections. Any report,
8 recommendations, underlying data, and reasons certified to
9 the Secretary by an advisory committee shall be made a part
10 of the record of the hearing, if relevant and material, sub-
11 ject to the provisions of section 7 (c) of the Administrative
12 Procedure Act (5 U.S.C. 1006 (c)). The National Acad-
13 emy of Sciences shall designate a member of the advisory
14 committee to appear and testify at any such hearing with
15 respect to the report and recommendations of such committee
16 upon request of the Secretary, the petitioner, or the officer
17 conducting the hearing: *Provided*, That this shall not pre-
18 clude any other member of the advisory committee from
19 appearing and testifying at such hearing. As soon as practi-
20 cable after completion of the hearing, but not later than
21 ninety days, the Secretary shall evaluate the data and reports
22 before him, act upon such objections and issue an order
23 granting, denying, or canceling the registration or requiring
24 modification of the claims or the labeling. Such order shall be

1 based only on substantial evidence of record at such hearing.
2 including any report, recommendations, underlying data, and
3 reason certified to the Secretary by an advisory committee,
4 and shall set forth detailed findings of fact upon which the
5 order is based. In connection with consideration of any
6 registration or application for registration under this section,
7 the Secretary may consult with any other Federal agency or
8 with an advisory committee appointed as herein provided.
9 Notwithstanding the provisions of section 3.c.(4); informa-
10 tion relative to formulas of products acquired by authority of
11 this section may be revealed, when necessary under this
12 section, to an advisory committee, or to any Federal agency
13 consulted, or at a public hearing, or in findings of fact issued
14 by the Secretary. All data submitted to the Secretary or to
15 an advisory committee in support of a petition under this
16 section shall be considered confidential by the Secretary and
17 by such advisory committee. Notwithstanding any other
18 provision of this section, the Secretary may, when he finds
19 that such action is necessary to prevent an imminent hazard
20 to the public, by order, suspend the registration of an
21 economic poison immediately. In such case, he shall give
22 the registrant prompt notice of such action and afford the
23 registrant the opportunity to have the matter submitted to an
24 advisory committee and for an expedited hearing under this
25 section. Final orders of the Secretary under this section

1 shall be subject to judicial review, in accordance with the
2 provisions of subsection d. In no event shall registration of
3 an article be construed as a defense for the commission of
4 any offense prohibited under section 3 of this Act.”

5 SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C.
6 135b) is hereby further amended by redesignating subsec-
7 tions d. and e. as subsections e. and f., and by adding a new
8 subsection d., as follows:

9 “d. In a case of actual controversy as to the validity
10 of any order under this section, any person who will be
11 adversely affected by such order may obtain judicial review
12 by filing in the United States court of appeals for the cir-
13 cuit wherein such person resides or has his principal place
14 of business, or in the United States Court of Appeals for the
15 District of Columbia Circuit, within sixty days after the
16 entry of such order, a petition praying that the order be
17 set aside in whole or in part. A copy of the petition shall
18 be forthwith transmitted by the clerk of the court to the
19 Secretary, or any officer designated by him for that purpose,
20 and thereupon the Secretary shall file in the court the rec-
21 ord of the proceedings on which he based his order, as pro-
22 vided in section 2112 of title 28, United States Code. Upon
23 the filing of such petition the court shall have exclusive
24 jurisdiction to affirm or set aside the order complained of
25 in whole or in part. The findings of the Secretary with

1 respect to questions of fact shall be sustained if supported
2 by substantial evidence when considered on the record as a
3 whole, including any report and recommendation of an ad-
4 visory committee. If application is made to the court for
5 leave to adduce additional evidence, the court may order such
6 additional evidence to be taken before the Secretary, and to
7 be adduced upon the hearing in such manner and upon such
8 terms and conditions as to the court may seem proper, if such
9 evidence is material and there were reasonable grounds for
10 failure to adduce such evidence in the proceedings below.
11 The Secretary may modify his findings as to the facts and
12 order by reason of the additional evidence so taken, and shall
13 file with the court such modified findings and order. The
14 judgment of the court affirming or setting aside, in whole or
15 in part, any order under this section shall be final, subject to
16 review by the Supreme Court of the United States upon
17 certiorari or certification as provided in section 1254 of
18 title 18 of the United States Code. The commencement of
19 proceedings under this section shall not, unless specifically
20 ordered by the court to the contrary, operate as a stay of an
21 order. The court shall advance on the docket and expedite
22 the disposition of all causes filed therein pursuant to this
23 section.”

24 SEC. 5. The first sentence of section 8.b. of said Act (61
25 Stat. 170; 7 U.S.C. 135f. (b)) is hereby amended by delet-

1 ing that part beginning with the second proviso therein down
2 to, but not including, the period at the end thereof.

3 SEC. 6. Section 3.a.(1) and section 9.a.(1) (b) of
4 said Act (61 Stat. 166, 170; 5 U.S.C. 135a.(a) (1),
5 135g.(a) (1) (b)) are hereby amended by changing the
6 phrase "has not been registered" wherever it appears there-
7 in, to read "is not registered".

8 SEC. 7. This Act and the amendments made hereby
9 shall become effective upon enactment, and all existing regis-
10 trations under protest issued under said Federal Insecticide,
11 Fungicide, and Rodenticide Act shall thereupon terminate.

88TH CONGRESS
2D SESSION

H. R. 9739

[Report No. 1125]

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

By Mr. ROSENTHAL

JANUARY 23, 1964

Referred to the Committee on Agriculture

FEBRUARY 3, 1964

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Feb. 18, 1964
For actions of Feb. 17, 1964
88th-2nd, No. 27

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HIGHLIGHTS: House passed pesticide labeling bill. Rep. Becker urged longshoremen to continue refusal to load wheat for shipment to Russia. Rep. Morris urged passage of legislation to limit beef imports. Rep. Patman complimented President's proposed poverty program. Sen. McGovern deplored drop in egg prices. Sen. Bartlett inserted Rep. Aspinall's speech endorsing land and water conservation fund bill. Sen. Proxmire charged Commerce has broken pledge for shipment of Soviet wheat on U. S. vessels. Sen. Dirksen introduced cotton bill.

HOUSE

1. **HEALTH; RESEARCH.** Both Houses received the President's message summarizing activities under the health research facilities program (H. Doc. 230). pp. 2773, 2834-5
2. **WHEAT.** Rep. Becker congratulated the longshoremen for their refusal to load American wheat for shipment to Russia and urged the continuation of their policy. p. 2835
3. **PESTICIDES.** Passed with amendment S. 1605, to provide for labeling of economic poisons with registration numbers to eliminate registration under protest, after substituting the provisions of a similar bill, H. R. 9739, which was then tabled. pp. 2839-42

4. FOREIGN TRADE. Rep. Lipscomb charged that the Commerce Department was instituting a move to withhold information from the public on trade with the Communists by discontinuing the publication of its daily list of export licenses issued. He also stated that the Department was trying to save this money while, at the same time, being heavily involved in arranging special shipping subsidies to grain companies in order to help them sell wheat to Russia. p. 2850
5. BEEF IMPORTS. Rep. Morris charged that the recently concluded voluntary agreement between the U. S. and Australia and New Zealand, to limit beef exports to the U.S., did not go far enough. He stated that the best solution to this problem would be passage of legislation. p. 2859
6. POVERTY. Rep. Patman complimented the President for his proposed poverty program and urged direct help to the poverty-stricken and bi-partisan support against poverty. pp. 2879-80
7. RECREATION. At the request of Rep. Aspinall, by unanimous consent, struck from the Consent Calendar S. J. Res. 17, to designate the lake to be formed by the waters from the Flaming Gorge Dam, Utah, and the recreation area contiguous to the lake, as "OMahoney Lake and Recreation Area." p. 2836
8. SCIENTIFIC RESERVE. On objections of Reps. Van Pelt, Kelly and Siler, struck from the Consent Calendar, H. R. 1096, to authorize Interior to cooperate with Wisc. in the designation of the Ice Age National Scientific Reserve. Rep. Van Pelt inserted his press statement charging that the hearings on this bill were inadequate. p. 2836
9. FORESTRY; LOANS. Passed without amendment H. R. 8230, to liberalize the granting of loans on forest tracts by providing for long-term credit by commercial banks. pp. 2837-8
10. TRANSPORTATION. Passed without amendment S. 2317, to amend Sec. 15 of the Shipping Act, 1916, to provide for the exemption of certain terminal leases from penalties. This bill will now be sent to the President. p. 2842
Rep. Secrest charged that a provision of H. R. 9903, to strengthen and improve the national transportation system, would end the restriction against railroads transporting their own produced commodities in interstate commerce. pp. 2849-50
11. RESEARCH. Received the progress report of the Select Committee on Government Research (H. Rept. 1143) (p. 2882). Rep. Elliott inserted the 10 major studies this Committee will undertake. pp. 2854-5
12. DEMOCRATIC PARTY. Rep. Whitener inserted Rep. Dorn's remarks discussing the Democratic Party's stand on farm programs, textiles, poverty, economy in Government, taxation, and foreign policy. pp. 2856-8
13. PERSONNEL; HEALTH. The Post Office and Civil Service Committee reported with amendment S. 1561, to amend the Federal Employees' Health Benefits Act "by eliminating the discrimination against married women's contributions toward their insurance premium" (H. Rept. 1142). p. 2882
14. FOOD-FOR-PEACE. Sen. Bartlett inserted a speech by Richard Reuter, special assistant to the President and Director of the food-for-peace program, reviewing and commending accomplishments of the program. pp. 2818-20

SENATE

unanimous consent that the bill be passed over without prejudice. I should like to say, however, that I shall discuss the matter with the chairman of the committee at some subsequent date.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

INTEREST ON VA LOAN FUNDS

The Clerk called the bill (H.R. 7932) to relieve the Veterans' Administration from paying interest on the amount of capital funds transferred in fiscal year 1962 from the direct loan revolving fund to the loan guaranty revolving fund.

The SPEAKER pro tempore. There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1823(b) of title 38, United States Code, is amended by adding at the end thereof the following sentence: "The Administrator shall not be required to pay interest on transfers made pursuant to the Act of February 13, 1962 (76 Stat. 8), from the capital of the 'Direct loans to veterans and reserves revolving fund' to the 'Loan guaranty revolving fund' and adjustments shall be made for payments of interest on such transfers before the date of enactment of this sentence."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. TEAGUE of Texas. Mr. Speaker, during the fiscal year 1962 nearly \$106 million of advances received from the Treasury were transferred from the direct loan revolving fund to the loan guaranty revolving fund. This action was taken pursuant to Public Law 87-404 and was in lieu of appropriation of funds to finance increased costs of claims and property acquisitions resulting from defaults in guaranteed or insured loans.

Section 1823(b) of title 38, United States Code, requires the Administrator of Veterans' Affairs to pay interest on funds advanced by the Treasury Department to the Veterans' Administration for the purpose of making direct loans to veterans for the purchase of homes or farmhouses. As of December 31, 1963, cumulative advances made by the Treasury for direct loan purposes amounted to approximately \$1.7 billion. Interest paid or payable by the Veterans' Administration on such advances totaled \$256.6 million.

This bill would relieve the Veterans' Administration of the requirement to pay this interest.

This legislation is requested by the Veterans' Administration and has been cleared by the Bureau of the Budget.

Hearings were held on this proposal by the Subcommittee on Housing on November 20 and 21, 1963.

Mr. SAYLOR. Mr. Speaker, I rise in support of H.R. 7932. This bill will relieve the Veterans' Administration from paying interest to the Treasury on certain funds transferred in fiscal year 1962 from the direct loan revolving fund to the loan guaranty revolving fund.

Pursuant to Public Law 87-404 approximately \$106 million of advances received

from the Treasury for the operation of the direct loan program were transferred to the loan guaranty revolving fund. This action was taken in lieu of appropriations to finance the increased cost of claims resulting from defaults on guaranteed loans. Because the law does not permit this \$105 million to be treated as an interest free transfer, the Veterans' Administration is required to pay approximately \$4 million a year annual interest thereon. This, of course, places an undue burden on the direct loan fund because the amount transferred is not earning interest for the fund. Normally, advances from the Treasury for direct loans are earning interest as a result of direct loans to veterans.

The legislation has been requested by the Veterans' Administration and has been cleared by the Bureau of the Budget. I believe it has merit and recommend its approval.

Mr. TEAGUE of Texas. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 2064) to relieve the Veterans' Administration from paying interest on the amount of capital funds transferred in fiscal year 1962 from the direct loan revolving fund to the loan guaranty revolving fund, a bill identical to H.R. 7932, just passed.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1823(b) of title 38, United States Code, is amended by adding at the end thereof the following sentence: "The Administrator shall not be required to pay interest on transfers made pursuant to the Act of February 13, 1962 (76 Stat. 8), from the capital of the 'direct loans to veterans and reserves revolving fund' to the 'loan guaranty revolving fund' and adjustments shall be made for payments of interest on such transfers before the date of enactment of this sentence."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 7932) was laid on the table.

Mr. TEAGUE of Texas. Mr. Speaker, I ask unanimous consent to extend my remarks in explanation of H.R. 6652 and H.R. 7932 immediately after their consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SAYLOR. Mr. Speaker, I ask unanimous consent to extend my remarks on the bills just referred to by the gentleman from Texas [Mr. TEAGUE].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

REGISTRATION OF PESTICIDE CHEMICALS

The Clerk called the bill (H.R. 9739) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to elim-

inate registration under protest, and for other purposes.

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2.2. (2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C., 1958 ed., Supp. III, 135(z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2)(c), a new provision reading as follows: "(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall

forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3.c(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this

section. Final orders of the Secretary under this section shall be subject to the judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f. (b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a. (1) and section 9.a. (1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a. (a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Mrs. SULLIVAN. Mr. Speaker, I congratulate the chairman and the members of the Committee on Agriculture for acting on the bill now before us to provide greater protection to the public in con-

nection with the use and handling of dangerous economic poisons. I was happy to appear before the Subcommittee on Department Oversight and Consumer Relations of the House Committee on Agriculture on Thursday, August 22, 1963, in support of this legislation, and I am happy today to join in urging House approval of the measure. This bill places the burden of proof on industry, to establish that a pesticide can safely be marketed before a certificate of registration can be issued. At the present time, a manufacturer can insist on the right to market a dangerous product until the Government can present legal proof of the product's hazards and unsuitability for general use.

This is an important step forward in protecting the consumer, but it is only one of a number of problems which we still must face in connection with pesticides. We have tripled the number of inspections by the Food and Drug Administration of shipments of raw agricultural commodities for illegal pesticides residue, but we are still inspecting only 1 percent of such shipments. Greater care must be exercised by the farmer in the use of these terribly dangerous products, and the Government must never relax its vigilance in preventing pesticides residue from contaminating our food. Just the other day we read of instances of a very dangerous pesticide getting into milk supplies. This is intolerable.

Mr. Speaker, under unanimous consent, I submit the testimony I gave on this legislation on August 22, 1963, as follows:

THE "BURDEN OF PROOF" ON PESTICIDES

(Statement by Representative LEONOR K. SULLIVAN, of Missouri, on legislation to tighten controls over pesticides and economic poisons before Subcommittee on Department Oversight and Consumer Relations of House Committee on Agriculture, Thursday, August 22, 1963)

Chairman JONES and members of the subcommittee, I am strongly in favor of the legislation now before you to require industry, rather than the Federal Government, to shoulder the burden of proof in connection with the marketing of pesticides which may be unsafe for use as intended.

This is an old story—an old controversy—as far as consumers are concerned. It used to be true in the Food, Drugs and Cosmetic Act that a doubtful or dangerous chemical additive could be used in foodstuffs until the Government was able to prove it unsafe. In 1958, we changed that, in the Food Additives Act, by placing on industry the burden of proof to establish in advance the safety of any additive used in food.

In 1960, we put an anticancer clause into the law affecting coloring matter used in foods, drugs or cosmetics. The burden of proof is on the manufacturer. Last year, we passed the far-reaching Drug Control Act so that the consumer would have far greater protections in the use of new drugs. The burden of proof is on the manufacturer.

We still need such a burden of proof shift of emphasis in our laws covering the safety of cosmetics, and of therapeutic devices. I have introduced omnibus legislation carrying out these objectives, and I hope we can pass it in this Congress. As pending before another committee, it would put the burden of proof of safety on the manufacturer.

The same principle of burden of proof is before this subcommittee now in connection with pesticides and economic poisons. The pesticides serve a very important economic purpose. In her tremendously effective book on this subject, Rachel Carson made clear that pesticides often serve a very useful purpose and that it is the improper or unsafe use of these poisons that she opposes. From the response her book elicited from residents of my congressional district, and others in the St. Louis area, I know that there is widespread public concern, which I share, over the pesticides problem.

Under present law, if the Department of Agriculture refuses to register a product for sale because it is not convinced the product is safe or effective, the manufacturer can nevertheless utilize a loophole in the law to place the product on sale anyway, and for an extended period, until the Department can then provide proof of the product's shortcomings. This takes extensive research and, more importantly, it takes time. In the meantime, great damage can be done to the unwary consumer or to public health and safety.

We used to have the same problem in connection with food additives and non-coal-tar color additives; we still, as I said earlier, have it in cosmetics and therapeutic devices. The burden of proof of safety should always be on the manufacturer. These economic poisons are seldom innocuous. They can often kill humans as well as insects. They can contaminate water supplies and meat and vegetable supplies. They must be treated with the respect their danger justifies. We must close any loopholes in the law which permit manufacturers to market products they cannot prove are safe in use in the manner intended. The burden of proof should not rest on the Government, because great damage can be done during the period the Government is developing the data necessary to remove a product which should not be marketed.

I support this legislation and urge its approval.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. ROSENTHAL. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2.2.(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C., 1958 ed., Supp. III, 135 (z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2)(c), a new provision reading as follows: "(d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following: "If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. The Secretary, on his own motion, may at any time refer such a matter to an advisory committee. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to regis-

tration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency. Notwithstanding the provisions of section 3.c.(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of

such petition, the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a.(1) and 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a) (1), 135g.(a) (1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

AMENDMENT OFFERED BY MR. ROSENTHAL

Mr. ROSENTHAL. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROSENTHAL: Strike out all after the enacting clause of S. 1605 and insert the provisions of H.R. 9739, as passed.

The amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 9739) was laid on the table.

PROVIDING FOR EXEMPTION OF CERTAIN TERMINAL LEASES FROM PENALTIES

The Clerk called the bill (S. 2317) to amend the provisions of section 15 of the Shipping Act, 1916, to provide for the exemption of certain terminal leases from penalties.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Shipping Act, 1916 (46 U.S.C. 814), be amended by inserting at the end thereof the following: "Provided, however, That the penalty provisions of this section shall not

apply to leases, licenses, assignments, or other agreements of similar character for the use of terminal property or facilities which were entered into before the date of enactment of this Act, and, if continued in effect beyond said date, submitted to the Federal Maritime Commission for approval prior to or within ninety days after the enactment of this Act, unless such leases, licenses, assignments, or other agreements for the use of terminal facilities are disapproved, modified, or canceled by the Commission and are continued in operation without regard to the Commission's action thereon. The Commission shall promptly approve, disapprove, cancel, or modify each such agreement in accordance with the provisions of this section."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The SPEAKER pro tempore. This concludes the call of the Consent Calendar.

TO EXTEND CERTAIN CONSTRUCTION AUTHORITY TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

Mr. TEAGUE of Texas. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7751) to extend certain construction authority to the Administrator of Veterans' Affairs in order to provide adequate veterans' hospital facilities in Los Angeles, Calif.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to make available an adequate site for the proposed Veterans' Administration hospital on land known as Hazard Park, city of Los Angeles, California, the Administrator of Veterans' Affairs is authorized to construct for the Department of Defense an Army Reserve Center on a site approved by the Department of Defense to be provided for such purpose by the city of Los Angeles and pursuant to specifications established by such Department or any component thereof. Such construction may be effected under any procedure now authorized for the construction of Veterans' Administration hospitals.

SEC. 2. Upon completion of such Reserve Center the Department of Defense is authorized to (1) assume full control and jurisdiction thereof, and (2) relinquish to the Veterans' Administration all right, title, and interest in and to the now existing Army Reserve Center located on the Hazard Park tract.

SEC. 3. Funds appropriated to the Veterans' Administration for the construction of hospital and domiciliary facilities shall be available for the purpose of the first section of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. AYRES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

Mr. TEAGUE of Texas. Mr. Speaker, this bill was introduced at the request of the Veterans' Administration in order to help that agency secure land on which to build a new veterans' hospital in the Los Angeles area.

Mr. Speaker, a subcommittee was sent out to that area, made up of four Republicans and one Democrat, to look into

this matter. The members of that subcommittee came back with a unanimous report favoring this bill.

Mr. Speaker, I would call upon the gentleman from Ohio [Mr. AYRES], the ranking Republican member on our committee, a member of the subcommittee, and who knows more about the matter than I do, to provide the House with a further explanation of the bill.

Mr. AYRES. Mr. Speaker, I rise in support of H.R. 7751. The ultimate purpose of this bill is to make available an adequate site for the proposed 1,040-bed Veterans' Administration hospital in Los Angeles, Calif., on land known as Hazard Park. At the present time there is an Army Reserve Center located on this property which must be relocated if the Veterans' Administration is to obtain the Hazard Park site. H.R. 7751 will authorize the Administrator of Veterans' Affairs to construct for the Department of Defense a new Army Reserve Center on a site to be provided by the city of Los Angeles.

The urgent need for additional hospital facilities in the Los Angeles area has already been established. In an effort to obtain the most appropriate site for the new hospital the Veterans' Administration found a city owned area adjacent to the University of Southern California Medical Center which is known as Hazard Park. The city of Los Angeles is willing to transfer this land to the Veterans' Administration in exchange for a small portion of the land on the west Los Angeles Veterans' Administration reservation which had already been declared surplus to the needs of the Veterans' Administration. The proposed exchange would have been a relatively simple transaction were it not for the fact that the Army Reserve Training Center is located on the Hazard Park tract under a 25-year lease from the city. The magnitude of the proposed new hospital and related space requirements make it impracticable to erect the hospital on Hazard Park unless some disposition can be arranged for the Reserve Training Center.

The Department of Defense is receptive to a relocation of the Reserve Center provided that the site and construction of the replacement center meet with their approval and is erected without cost to them. In this connection, the city of Los Angeles has already agreed to provide a substitute site without cost which is acceptable to the Department of Defense.

The Veterans' Administration already has \$750,000 appropriated for the purpose of securing a site for the new hospital. It is anticipated that the replacement Reserve Center can be constructed at a cost of not more than \$1 million. Inasmuch as the \$750,000 already available for site acquisition can be used, it is anticipated that the additional expenditure will be not more than \$250,000.

Because of the unusual aspects of this land transfer transaction, the distinguished chairman of the committee appointed a subcommittee to thoroughly investigate all phases of this matter. The subcommittee concluded that the Hazard Park site was a most desirable

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

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HIGHLIGHTS: House agreed to amended cotton-wheat bill. House passed food-stamp bill. Senate concurred in House amendment to pesticide labeling bill with amendment.

HOUSE

1. COTTON; WHEAT. By a 211-203 vote, concurred in the Senate amendment to H. R. 6196, the cotton-wheat bill. This bill will now be sent to the President. For provisions of the bill see Digests 32 and 41. pp. 7083-4, 7089-109, 7113-6
2. FOOD STAMP PLAN. Passed, 229-189, with amendments H. R. 10222, the food stamp bill. pp. 7058-89

Agreed to the following amendments:

By Rep. Jones, Mo., to remove the prohibition against distribution of surplus commodities in areas where the food stamp plan is in effect. pp. 7071-2

By Rep. Hutchinson, to limit delegation of responsibility of stamp issuance by State agencies to conformance with State law in lieu of approval by the Secretary of Agriculture. p. 7075

By Rep. Cooley, to make a technical correction. p. 7076
Various committee amendments.

Rejected the following amendments:

Committee amendments (which had been sponsored by Rep. Quie) to require participating States to pay to the Federal Government 50% of the value of the free food stamps issued to participants within the State, by a 155-168 vote (pp. 7077-83). Later rejected, 195-223, a motion by Rep. Hoeven to recommit the bill with instructions to reinstate this amendment (p. 7088).

By Rep. Andrews, N. Dak., transferring the food stamp program to HEW, by a 93-142 vote. pp. 7063-9

By Rep. Hoeven, to limit the use of food stamps to food items produced by American farmers and declared surplus, by an 85-121 vote. pp. 7069-70

By Rep. Hoeven, to end the food stamp program on June 30, 1967, by an 82-113 vote. pp. 7072-3

By Rep. Leggett, to require apportionment of the funds to all States on the basis of population. pp. 7075-6

3. AGRICULTURAL CONSERVATION PROGRAM. Both Houses received from this Department a proposed bill to amend Sec. 8 (e) of the Soil Conservation and Domestic Allotment Act so as to substitute language for the "small cost-share increase" provision which would direct the Secretary to give particular consideration to the conservation requirements of small family farms in the approval of ACP cost-sharing assistance for application of needed conservation measures. To House Agriculture Committee and Senate Agriculture and Forestry Committee. pp. 7122, 7050
4. RECLAMATION. Both Houses received from the Interior Department a report on the Tualatin project, Oreg. (H. Doc. 295); to Interior and Insular Affairs Committees. pp. 7122, 7050
5. LEGISLATIVE PROGRAM. It is expected that the House will debate the legislative appropriation bill today. p. D264

SENATE

6. PESTICIDES. Concurred in the House amendment, with an amendment, to S. 1605, to provide for labeling of economic poisons with registration numbers to eliminate registration under protest. The adopted Senate amendment, proposed by Sen. Ribicoff, provides that when an application to register a pesticide is submitted, all information in support of the application would be kept secret except data on health and safety of the product which would be made available to the public. pp. 6967-9
7. CIVIL RIGHTS. Continued debate on H. R. 7152, the civil rights bill (pp. 6970, 6978-7005, 7006-7, 7009-10, 7019-50). Several Senators discussed the migration of farmers to cities, and Sen. Clark inserted a chart estimating the lifetime earnings of farmers and farm laborers based on their educational background (pp. 6998-9). Sen. Case charged that a great part of the N. J. textile industry had left that State for N. C., and Sen. Ervin denied this. (p. 7031).
8. INTERIOR APPROPRIATION BILL. Sen. Hayden submitted amendments which he intends to propose to this bill, H. R. 10433. p. 7052
9. WATER. The "Daily Digest" states that the Special Subcommittee on Western Water Development of the Public Works Committee "adopted a program for starting work



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Senate

(Legislative day of Monday, March 30, 1964)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by Hon. PAUL H. DOUGLAS, a Senator from the State of Illinois.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

O Thou Master of all good workmen, with the passing from this mortal stage of a dedicated servant of Thine and of the Nation, Douglas MacArthur, we now praise famous men—men renowned for their power, giving counsel by their understanding, leaders of the people, wise and eloquent in their instruction.

Such leave a name behind them, that their praises might be reported. We give thanks that in human personalities there are so often made flesh Thine eternal principles of righteousness, which the contaminating evils of the world cannot tarnish or erode.

Especially this day we thank Thee, our God, and take courage from the uncorrupted and uncompromising record of this great captain of our time, in whose undaunted faith across all the years of his pilgrimage there ever sang—

"Then conquer we must,
For our cause it is just;
And this be our motto—
In God is our trust."

And now that he has gone on from our physical sight and side, may he return to our troubled times in a renewed determination of the Republic to face any foe, to pay any price, not that America may conquer, but that the starry ideals that give luster to freedom's banners may come to their coronation under all skies. For the fulfillment of all our fallen hero's dreams, as his brave soul goes marching on, we commend his conquering spirit into Thy hands.

We ask it in the dear Redeemer's name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 8, 1964.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. PAUL H. DOUGLAS, a Senator from the State of Illinois, to perform the duties of the Chair during my absence.

LEE METCALF,
Acting President pro tempore.

Mr. DOUGLAS thereupon took the chair as Acting President pro tempore.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, April 7, 1964, was dispensed with.

AMENDMENT OF FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. RIBICOFF. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate bill 1605.

The ACTING PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, which was to strike out all after the enacting clause and insert:

That section 2.z.(2) (b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended; 7 U.S.C., 1958 ed., Supp. III, 135(z) (2) (b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2) (b), deleting the period at the end of section 3.a.(2) (c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2) (c), a new provision reading as follows: "(d) when re-

quired by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory

committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3.c.(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee. Notwithstanding any other provision of this section, the Secretary

may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

Sec. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically order by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

Sec. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f.(b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

Sec. 6. Section 3.a.(1) and section 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

Sec. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal

Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Mr. RIBICOFF. Mr. President, I move that the Senate concur in the amendment of the House, with an amendment which I offer on behalf of myself, the Senator from Rhode Island [Mr. PELL], the Senator from New York [Mr. JAVITS], and the Senator from Kansas [Mr. PEARSON].

The ACTING PRESIDENT pro tempore. The amendment submitted by the Senator from Connecticut will be stated.

The LEGISLATIVE CLERK. On page 6, beginning in line 9, it is proposed to strike out the following language:

All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee.

And in lieu thereof insert the following:

All data submitted to an Advisory Committee in support of a petition under this section shall be considered confidential by such Advisory Committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the Committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that an explanation of our amendment be printed at this point in the RECORD.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR RIBICOFF ON S. 1605

The effect of pesticide chemicals upon plant, animal, and human life has been the subject of widespread public discussion for the last several years.

In the fall of 1962 Rachel Carson's "Silent Spring" heightened public interest and concern. Her book was followed by a critical review of the problem by the President's Science Advisory Committee and its report of a year ago. Since last May, the Subcommittee on Reorganization and International Organizations has been reviewing the subject from the point of view of the adequacy of Federal programs and laws dealing with pesticide research and regulation.

Early in our hearings the problem of "protest registration" was pinpointed. Up to that point it was widely thought that a pesticide could be marketed only after the Department of Agriculture was satisfied as to its safety and effectiveness. As a matter of fact, the law now permits a manufacturer to "register" a doubtful pesticide with the Secretary of Agriculture and proceed to market it. If the Secretary questions the product's safety or effectiveness, he still must register the pesticide "under protest." He then has the burden of establishing that it does not comply with the safety or effectiveness standards prescribed by the act. While the Secretary gathers his proof, a pesticide can be sold on the market and be causing injury.

On May 27, 1963, to close the loophole of "protest registration," this bill would prohibit the marketing of any pesticide until the Government was satisfied as to its safety and effectiveness and empower the Secretary of Agriculture to withdraw a dangerous

product from the market without the delay of a long hearing. I was joined in this effort by the Senator from Kansas [Mr. PEARSON], the Senator from Rhode Island, [Mr. PELL] and the Senator from New York [Mr. JAVITS].

On October 25, 1963, the bill passed the Senate. On February 17, 1964, it passed the House with amendments. That is its present status.

Most of the House amendments are technical in nature and should be accepted by the Senate. One, however, causes some difficulty.

In an effort to make certain that the Advisory Committee established under S. 1605 would be covered by confidentiality prohibitions of existing law, the House added language on page 6, lines 14-17 of the bill, as follows:

"All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee."

According to the House Committee on Agriculture in its report on the bill—

"This language was added in order to further protect secret information concerning formulas and packaging methods from disclosure to unauthorized sources by the advisory committee appointed by the Secretary in connection with carrying out the provisions of this bill."

Obviously, the amendment goes beyond "formulas and packaging methods" and applies not only to the Advisory Committee but to the Secretary and all officials of the Department of Agriculture as well, who are already covered by confidentiality restrictions in the law.

I am fearful that the House amendment is not only unnecessarily restrictive but in conflict with other provisions of the bill as well. It should not be accepted by the Senate for three main reasons:

First, it would result in "all data" being considered confidential rather than trade secrets, such as formulas, which are so well deserving of such treatment. In its report on the use of pesticides, the President's Science Advisory Committee expressed the belief that all data used as a basis for granting registration and establishing tolerances should be published, thus allowing the hypotheses and the validity and reliability of the data to be subjected to critical review by the public and the scientific community. The House amendment goes contrary to this proposal.

Second, the scope of this provision, covering "all data" and being applicable to the Secretary of Agriculture as well as the advisory committee, appears to be in direct conflict with the preceding sentence in the bill, starting at line 9 on page 6, which specifically authorizes the disclosure of data when it is necessary.

Finally, it is not necessary to have a further restriction on the Secretary or employees of the Agriculture Department as the act presently prohibits them from revealing information relating to formulas. Furthermore, section 1905 of title 18 of the United States Code is applicable to the officers and employees of the Department and this too makes unlawful the disclosure of confidential information.

I will offer an amendment to delete this provision from the bill and substitute in its stead a provision designed to protect actual trade secrets against disclosure by the advisory committee.

I want to emphasize that passage of this bill takes on a new urgency since the recent announcement by the Department of Agriculture that it will hold public hearings on April 9 on the question of removing three highly toxic pesticides from the market.

The Department of Agriculture is obviously considering either removing the pesticides

aldin, dieldrin and endrin from the market altogether or drastically restricting their use. If the evidence supports them this will be accomplished by a change in registration. But as we have already seen, under existing law the manufacturer can still continue to market these products as before until the Department has gathered massive evidence that they are harmful.

The burden of proof should be on the manufacturer to show his product safe rather than on the Government to prove it harmful. This is the essence of adequate consumer protection law. Without it we are back in the dark ages of "let the buyer beware."

What a cruel hoax it would be to crank up the massive machinery of Government—hold a public hearing—reach a conclusion that the three products are at least of doubtful safety—and then watch them continue to appear on the market until a higher degree of proof is gathered by the Government. That higher degree of proof will not be dead fish. We already know about them. It will be injury to people. That is not how the law should work.

If the Department of Agriculture hearings are to have any meaning, S. 1605 must become the law of the land.

I urge approval of the amendment.

Mr. ELLENDER. Mr. President, will the Senator from Connecticut yield?

Mr. RIBICOFF. I am pleased to yield.

Mr. ELLENDER. Will the Senator from Connecticut state the effect of the amendment?

Mr. RIBICOFF. Yes. This amendment has been cleared with the chairman of the Committee on Agriculture and Forestry [Mr. ELLENDER], the ranking minority member of the committee [Mr. AIKEN], the majority leader, the minority leader, and other Senators. It concerns a bill that will make it possible for the Department of Agriculture, when it acts in regard to the advisability of the use of a pesticide, to end the practice of "protest registration," and make sure that when the Department disapproves an application to register a pesticide, the manufacturer will not be able to put the pesticide on the market as he can today.

The difference between the amendment I offer and the amendment of the House is that the House amendment would keep secret all information submitted in support of the application, while my amendment makes sure data on health and safety is available to the public. We felt that while the formula itself and any trade secret should be kept confidential, it would be against the beneficial interest of the public and against freedom of information to deny to the public and to the various Departments and to the Senate the information, for example, on side effects of the pesticide.

Mr. DIRKSEN. Mr. President, on a number of occasions I have discussed the amendment with the Senator from Connecticut. I think the amendment is acceptable, and I believe that the bill with this amendment will be more acceptable than it would have been without it.

Mr. RIBICOFF. That is true.

In submitting the amendment, I repeat that its cosponsors are the Senator from Rhode Island [Mr. PELL], the Sen-

ator from New York [Mr. JAVITS], and the Senator from Kansas [Mr. PEARSON].

The Committee on Agriculture and Forestry spent considerable time on this matter; and I am grateful to the chairman of the committee [Mr. ELLENDER] and to its ranking minority member [Mr. AIKEN] for their consideration of both the amendment and the bill.

I think the bill with this amendment will close a very decided gap in connection with one of the potential dangers the country faces from pesticides.

Mr. DIRKSEN. Mr. President, this matter is very much before the public; and there always is a danger that too narrow an interpretation can do a great deal of damage to the entire agricultural economy of the country.

When all is said and done, there is a continuing and unremitting struggle against insect life; and there is only one way to wage that struggle—namely, by the use of pesticides and fungicides that American industry has developed. The industry tries to exercise the utmost of caution and care in establishing careful tolerances in every case.

So I hope particular caution will be exercised, so that we do not get too narrow an interpretation and construction, and thereby do damage to the industrial side of the economy, while doing good on the other side.

Mr. RIBICOFF. I thank the Senator from Illinois for his contribution.

I think it only fair to state that responsible manufacturers have not opposed this provision; and when the Department of Agriculture has raised a question concerning the dangers involved in the use of a particular pesticide, there has invariably been cooperation by most of the manufacturers of the country. However, there is a definite loophole in the law; and from time to time there have been manufacturers who have not acted in so responsible a manner; and even though a particular pesticide has been disapproved, they have continued to sell it on the market.

So I thank the distinguished minority leader for his contributions.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Connecticut [Mr. RIBICOFF].

The motion was agreed to.

CALL OF THE ROLL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll; and the following Senators answered to their names:

[No. 123 Leg.]		
Alken	Cotton	Inouye
Allott	Curtis	Javits
Anderson	Dirksen	Johnston
Bartlett	Dominick	Jordan, Idaho
Bayh	Douglas	Keating
Beall	Ellender	Kennedy
Bennett	Fong	Kuchel
Bible	Gore	Lausche
Boggs	Gruening	Long, Mo.
Burdick	Hart	Mansfield
Cannon	Hayden	McCarthy
Carlson	Hickenlooper	McClellan
Case	Holland	McGovern
Church	Hruska	McIntyre
Clark	Humphrey	McNamara

Metcalf
Miller
Monroney
Morse
Morton
Mundt
Muskie
Nelson
Neuberger

Pastore
Pearson
Pell
Proxmire
Ribicoff
Saltonstall
Scott
Simpson
Smith

Sparkman
Symington
Talmadge
Walters
Williams, N.J.
Williams, Del.
Yarborough
Young, Ohio

Mr. HUMPHREY. I announce that the Senator from Virginia [Mr. BYRD], the Senator from Connecticut [Mr. DODD], the Senator from North Carolina [Mr. ERVIN], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from North Carolina [Mr. JORDAN], the Senator from Wyoming [Mr. McGER], the Senator from Utah [Mr. MOSS], the Senator from Virginia [Mr. ROBERTSON], and the Senator from Georgia [Mr. RUSSELL] are absent on official business.

I also announce that the Senator from Maryland [Mr. BREWSTER], the Senator from West Virginia [Mr. BYRD], the Senator from Mississippi [Mr. EASTLAND], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from California [Mr. ENGLE], the Senator from Indiana [Mr. HARTKE], the Senator from Alabama [Mr. HILL], the Senator from Washington [Mr. JACKSON], the Senator from Louisiana [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the Senator from Florida [Mr. SMATHERS], the Senator from Mississippi [Mr. STENNIS], and the Senator from South Carolina [Mr. THURMOND], are necessarily absent.

I further announce that the Senator from West Virginia [Mr. RANDOLPH] is necessarily absent.

Mr. KUCHEL. I announce that the Senator from Kentucky [Mr. COOPER], the Senator from Arizona [Mr. GOLDWATER], the Senator from New Mexico [Mr. MECHEM], the Senator from Vermont [Mr. PROUTY], and the Senator from Texas [Mr. TOWER], are detained on official business.

The Senator from North Dakota [Mr. YOUNG] is necessarily absent.

The PRESIDING OFFICER (Mr. RIBICOFF in the chair). A quorum is present.

The Chair lays before the Senate the unfinished business.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. CLARK. Mr. President—

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

ORDER OF BUSINESS

Mr. CHURCH. Mr. President, will the Senator from Pennsylvania yield to me?

The PRESIDING OFFICER. The Senator from Pennsylvania has been recognized.

Mr. CLARK. Mr. President, may I state that several of my colleagues have asked me to yield to them before I begin my speech on title VII. I shall be happy to do so, calling the attention of each Senator to the rule of germaneness which is now in effect and the necessity of obtaining unanimous consent to speak on other subjects for the next 3 hours.

I yield to the Senator from Idaho.

THE MAILBAG IS NOT AN INFALLIBLE GUIDE

Mr. CHURCH. Mr. President, I believe it is fair to say, in the highly charged political atmosphere of Washington, that we sometimes lose a sense of perspective about what the rest of the Nation is thinking. To compensate for this, we often make impossible demands on our mailbag. In the absence of accurate indicators, we tend to let letters loom as the key to the thinking of our citizens.

To be sure, we need mail; we need the additional insight into State problems and national issues that only mail can give us. But the mailbag—as many Senators are finding out during the current civil rights debate—is not an infallible guide. Indeed, many groups are organizing letterwriting campaigns to defeat the civil rights bill. As a result, the current deluge of mail against this important and vital piece of legislation is giving us a distorted picture of what all the people of our States are, in fact, thinking.

Thus, it is a relief to receive a letter which puts things back into better perspective.

Mr. President, I invite the attention of the Senate to such a letter, one which I recently received from a constituent, Mr. Perry Swisher, a Republican State senator in Idaho. Mr. Swisher reminds us:

But a Senator who realizes what a barrage of misrepresentation is reaching his constituents will not panic.

He very wisely adds that—

The absence of any letters whatever from the overwhelming majority of Idahoans is the voice of calm and decency, the consent-giving silence of the informed and the unafraid.

Mr. President, I ask unanimous consent to have Mr. Swisher's letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

IDAHO STATE SENATE,
CAPITOL BUILDING,
Boise, March 18, 1964.

U.S. Senator FRANK CHURCH,
Senate Office Building,
Washington, D.C.

DEAR FRANK: It's reported that the mail to Idaho's congressional delegation is running

10 to 1 against the civil rights bill. But thousands of dollars, upon thousands, are being spent to solicit Idaho objections. Each dollar ought to be worth a letter. Are you receiving thousands upon thousands, or a few hundred?

I don't really blame the recipient of a letter telling him the Federal Congress is about to deprive him of his rights and place us all under a dictatorship, if he writes to you in alarm.

But a Senator who realizes what a barrage of misrepresentation is reaching his constituents will not panic. His constituents are asking him not to vote to place them under dictatorship. Because the civil rights effort is a move in another direction—away from the practice of discrimination which is more consonant with dictatorship than with the ambitions of a free society—he has no problem. He can vote for the civil rights bill as he knows it and satisfy his petitioners.

This is once I can't bring myself to promoting a countermovement—fighting fire with fire. The absence of any letters whatever from the overwhelming majority of Idahoans is the voice of calm and decency, the consent-giving silence of the informed and the unafraid.

In the polls, those who give the poll-taker no indication of their stand enter the totals as "no opinion," a massive misnomer for such of them as choose not to venture their opinion. It is an even greater misnomer when there is no poll. In the language of the pollsters the Idaho total on civil rights legislation would probably read at least 97 percent "no opinion." Interpreted more accurately as "it's up to you. Vote your conscience."

Vote your conscience. The prediction was freely made in 1961 that if Idaho adopted a strong civil rights law, racial unrest and loss of personal rights would result. The act passed. In Idaho race relations were never better than they are today. We're making important progress against thoughtless cruelty, we are brothers to a degree we were not before the Idaho act passed.

It would be a victory for panic and fear if the barrage of misrepresentation changes a single Senate vote. I don't worry for an instant about your vote. You can use some reassurance and I'm only writing to reassure you.

Best personal regards.

PERRY SWISHER.

Mr. CLARK. Mr. President, I ask unanimous consent that without losing my right to the floor I may yield in turn, first to the Senator from Ohio [Mr. LAUSCHE], next to the Senator from Missouri [Mr. LONG], next to the Senator from New York [Mr. JAVITS], and finally to the Senator from Hawaii [Mr. FONG].

The PRESIDING OFFICER. Without objection, it is so ordered.

STRIP COAL MINING

Mr. LAUSCHE. Mr. President, I ask unanimous consent that, notwithstanding the rule of germaneness, I may be permitted to make a statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUSCHE. Mr. President, several months ago, I introduced a bill asking for the study of the strip coal mining operations.

Today, I should like to make a brief comment on that bill.

Mr. President, how irresponsible can governments in our country get in deal-

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Apr. 30, 1964
For actions of Apr. 29, 1964
88th-2nd; No. 84

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HIGHLIGHTS: House concurred in Senate amendment to pesticide labeling bill. Rep. Nelsen criticized administration handling of beef import problem. House received President's proposed bill on Appalachia. House received supplemental appropriations estimates for USDA. Rep. Holifield questioned new justification formula for continuation of Government research projects. Sen. Javits inserted Republican Citizens Committee's report on agriculture. Sen. Randolph and several Reps. introduced and Sen. Randolph discussed Appalachia bill.

SENATE

1. CIVIL RIGHTS. Continued debate on H. R. 7152, the civil rights bill. pp. 9271-2, 9274-93, 9295-9313

2. FARM PROGRAM. Sen. Javits inserted the report of the Critical Issues Council of the Republican Citizens Committee on the subject of agriculture, "A Free and Prosperous Agriculture," and stated that the report "provides an interesting

analysis of the complex questions which confront our Nation in finding a meaningful solution to our agricultural problems." pp. 9266-70

Sen. Humphrey inserted an address by the chairman of the Agricultural Committee of the Independent Bankers Association, "Profile of the Farm Problem," contending that "what we commonly refer to today as the farm problem is actually the problem of low net farm income." pp. 9261-3

3. PRICES. Sen. Proxmire spoke in support of the proposed "quality stabilization" bill, criticized "unsupported charges and unsubstantiated figures... designed to frighten, rather than inform, the public," and inserted excerpts from an article in The Discount Merchandiser in support of his position. pp. 9257-8
4. DISASTER RELIEF; LOANS. Sen. Gruening urged low-interest rate loans by the Small Business Administration for rehabilitation of Alaska as a result of the recent earthquake and contended that loans are made to foreign countries under the foreign aid program at low interest rates. pp. 9238-9
5. MINERALS; LANDS. Sen. Dominick charged that present policies of the Interior Department are delaying oil shale development in certain western States. pp. 9239-43

HOUSE

6. SUPPLEMENTAL APPROPRIATIONS. Received from the President a request for supplemental appropriations for fiscal year 1964 which includes a request of \$12 million for Emergency Conservation Measures, ASCS (H. Doc. 197). p. 9215
 7. APPALACHIA. Received from the President "a draft of proposed legislation to provide public works, and economic development programs, and the planning and coordination needed to assist in the development of the Appalachian region;" to Public Works Committee (p. 9215). The President's transmittal letter states that the proposal provides for a pasture improvement program to convert marginal farm land to pasture for livestock production, an assistance program for timber management, manufacturing, and marketing, an acceleration of water facilities construction, expanded programs for improving practices and land restoration following mining operations, a developmental highway system of 2,350 miles, stepped-up human resources programs, and establishment of a Federal-State regional commission for comprehensive planning to guide government and private agencies in a continuing attack on the economic distress in the region. He stated that funds for the program, estimated at \$228 million plus \$34 million included in the anti-poverty program, was included in the contingency item of \$500 million in his budget sent to Congress in January.
 8. PESTICIDES LABELING. Concurred in the Senate amendment to S. 1605, to provide for labeling of economic poisons with ^{registration} numbers to eliminate registration under protest. This bill will now be sent to the President. p. 9127
- Rep. Mathias stated that Rachel Carson's work has resulted in such things as the cancellation by USDA of the registration of heptachlor for the treatment of alfalfa, and urged creation of a U. S. Botanical Survey. pp. 9124-5
9. MEAT IMPORTS. Rep. Nelsen criticized the Administration's handling of the meat import problem and inserted two items on the matter. p. 9156



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No. 84

House of Representatives

The House met at 12 o'clock noon.

The Chaplain, Rev. Bernard Braskamp, D.D., offered the following prayer:

Romans 8: 31: *If God be for us, who can be against us?*

O Thou gracious Benefactor, whose blessings cannot be numbered and whose treasury of goodness is inexhaustible, may our minds and hearts always go out to Thee with feelings of adoration and gratitude for day by day Thou dost provide for all our needs.

We humbly confess that we are conscious of many failures and are aware that we have been recreant in the discharge of our responsibilities and unfaithful to the sacred vows of our high vocation.

In the midst of the world's struggles and tensions may we cleave with increasing tenacity of faith and courage to the abiding truth that nothing can impede the progress and ultimate triumph of the kingdom of reason and righteousness.

Grant that through our influence and example, our dedication and devotion, the cause of brotherhood and good will shall be advanced and peace shall be the glorious possession of all mankind.

Hear us in the name of the Prince of Peace. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

PUBLIC LANDS SUBCOMMITTEE

Mr. BARING. Mr. Speaker, I ask unanimous consent that the Public Lands Subcommittee of the Committee on Interior and Insular Affairs have permission to sit this afternoon during general debate.

The SPEAKER. Is there objection to the request of the gentleman from Nevada?

There was no objection.

TRIBUTE TO HON. CLAIR ENGLE

(Mr. O'HARA of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. O'HARA of Illinois. Mr. Speaker, during his service in this body and our association together I delighted in and was enriched by my warm friendship with the junior Senator from California. The news of the affliction that hit him in the flower and prime of a brilliant career came to his many friends in the House unexpectedly out of the dark, and our hopes and prayers were with him for a speedy and complete recovery. Until yesterday, when CLAIR ENGLE announced his retirement for the time from political competition, I think all his former colleagues in the House fully expected him to be renominated, reelected, and to continue for years to come his outstanding service in the other body for the people of his State and Nation. The courage with which he faced the problems of his illness was matched by the courage of his fine and noble wife, and to both go the every good thought and wish of their many friends in the House.

Mr. Speaker, it is my prayer that the political career of CLAIR ENGLE is only on vacation while he is resting and recovering from his operation. Our country can ill afford to lose his dedicated service.

SUBCOMMITTEE ON NASA OVERSIGHT

Mr. HECHLER. Mr. Speaker, I ask unanimous consent that the Subcommittee on NASA Oversight of the House Committee on Science and Astronautics have permission to sit this afternoon during general debate.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Mr. ROSENTHAL. Mr. Speaker, I ask unanimous consent to take from the Speakers' desk the bill (S. 1605) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, and to concur in the

Senate amendment to the House amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment, as follows:

On page 6, lines 9 to 12, of the House engrossed amendment, strike out "All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee", and insert "All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary".

The SPEAKER. Is there objection to the request of the gentleman from New York?

Mr. CURTIS. Mr. Speaker, reserving the right to object, I assume this has been cleared with this side?

Mr. ROSENTHAL. Yes, it has been cleared with the ranking member of the Committee on Agriculture, and with the minority leader.

Mr. HOEVEN. Reserving the right to object, Mr. Speaker, I want to say that this matter has been cleared with the minority and is perfectly agreeable to us.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

The Senate amendment to the House amendment was concurred in.

A motion to reconsider was laid on the table.

COMMITTEE ON THE JUDICIARY

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may be permitted to sit today during general debate and during the balance of the week on the prayer bill.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

INTERNATIONAL LABOR ORGANIZATION CONFERENCE

Mr. BOLLING, from the Committee on Rules, on behalf of Mr. SISK, reported the following privileged resolution (H. Res. 687, Rept. No. 1364) which was referred to the House Calendar and ordered to be printed:

Resolved, That the Speaker of the House of Representatives is hereby authorized to appoint a member from the majority and a member from the minority of the Committee on Education and Labor to attend the International Labor Organization Conference in Geneva, Switzerland, between June 17, 1964, and July 9, 1964.

He is further authorized to appoint as alternates a member from the majority and a member from the minority of the said committee.

Notwithstanding section 1754 of title 22, United States Code, or any other provision of law, local currencies owned by the United States shall be made available to the aforesaid delegates and alternates from the Committee on Education and Labor of the House of Representatives engaged in carrying out their official duties under section 190(d) of title 2, United States Code: *Provided*, (1) That no member of said committee shall receive or expend local currencies for subsistence in an amount in excess of the maximum per diem rates approved for overseas travel as set forth in the Standardized Government Travel Regulations, as revised and amended by the Bureau of the Budget; (2) that no member of said committee shall receive or expend an amount for transportation in excess of actual transportation costs; (3) no appropriated funds shall be expended for the purpose of defraying expenses of members of said committee in any country where counterpart funds are available for this purpose.

That each member of said committee shall make to the chairman of said committee an itemized report showing the number of days visited in each country whose local currencies were spent, the amount of per diem furnished and the cost of transportation if furnished by public carrier, or if such transportation is furnished by an agency of the United States Government, the identification of the agency. All such individual reports shall be filed by the chairman with the Committee on House Administration and shall be open to public inspection.

INTERNATIONAL DEVELOPMENT ASSOCIATION

Mr. BOLLING, from the Committee on Rules, on behalf of Mr. DELANEY, reported the following privileged resolution (H. Res. 707, Rept. No. 1365), which was referred to the House Calendar and ordered to be printed:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 2214) to amend the International Development Association Act to authorize the United States to participate in an increase in the resources of the International Development Association. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking and Currency, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been

adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

EXTENSION OF RENEGOTIATION ACT

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 705 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 10669) to extend the Renegotiation Act of 1951, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio [Mr. BROWN], and pending that I yield myself such time as I may consume.

Mr. Speaker, there is controversy over the content of the bill whose consideration is made in order by this resolution, but to the best of my knowledge there is no controversy whatever over the resolution itself.

Mr. BROWN of Ohio. Mr. Speaker, as the gentleman from Missouri has explained, House Resolution 705 makes in order the consideration of H.R. 10669, a bill to extend for 2 years the Renegotiation Act of 1951, with certain amendments thereto, under an open rule, providing 2 hours of general debate, with the usual provision for offering amendments under the 5-minute rule.

As the gentleman from Missouri has explained, there is no controversy over the rule itself. The request for the rule was unanimous by representatives from the Committee on Ways and Means, which has jurisdiction over this measure, but it will be noted in the report on the bill that there was a minority report filed by, I believe, 10 members of the committee, and certain amendments will be offered to the measure when it comes up under the 5-minute rule.

I would like at this time, Mr. Speaker, to yield the balance of my time to the gentleman from California [Mr. SMITH], my colleague on the Committee on Rules.

(Mr. SMITH of California asked and was given permission to revise and extend his remarks.)

Mr. SMITH of California. Mr. Speaker, my district has a large amount of small business. So in speaking on H.R. 10669 I hope the Members will consider it in terms of their interests in the small business firms in their districts and in the light of commonsense as to

the bad effects renegotiation has on those small businesses.

I particularly hope that my remarks will reach the hearts and minds of Members on both sides of the aisle. Where the interests of small business are concerned, it makes no difference to which party we belong. Members of the majority and minority are certainly in favor of small business. All Members have many valued small business firms among their constituents.

Without amendment, H.R. 10669 will continue the harms which these small companies suffer as the result of the Renegotiation Act. I am convinced of this because of facts obtained from small businesses, and from facts which I obtained directly from the chairman of the Renegotiation Board. These facts were not covered in the annual reports issued by the Board to the Members of this body. Nevertheless, they are a part of the records of the Board and I owe thanks to Chairman Hartwig for his graciousness in responding to my inquiries regarding them.

I should also point out that these facts—which show a serious downturn in the profits of small firms subject to renegotiation—were not available to me in time for me to present them to the Ways and Means Committee to consider prior to their reporting of the bill. There were no public hearings on this proposed extension of the act, and there was, therefore, no opportunity for small firms to come forward and testify to the troubles they have been experiencing.

Mr. Speaker, this was a serious error. A short while ago, the chairman of the Senate Select Committee on Small Business, took note of the fact that the number of manufacturing concerns in this country has dropped continuously since 1957. In the last 7 years, there has been a net decrease of 19,000 small manufacturers in the business population. This is a drop of almost 6 percent in the face of an expanding population and in spite of the fact that every other kind of small business has shown an increase.

Many of us have felt that part of this decline might be due to the declining share of Government procurement going to small firms. Based upon figures from the Renegotiation Board, there is no doubt that it is not just the amount of Federal dollars that go into orders from small business, it is the conditions under which such orders are placed, and the negative effects of just such laws as the one we are now asked to extend.

FLIGHT OF SUBCONTRACTORS

Most small manufacturers who take part in Federal procurement must necessarily make their sales as subcontractors. It is obvious that a small firm cannot bid on furnishing the Government with submarines, intercontinental missiles, or aircraft carriers. But they can make parts for these items and sell them to the large prime contractors. The question is: Can these small firms, as subcontractors, expect to make enough money to stay in business?

From the figures, I am convinced that they are extremely lucky if they can.

In his letter to me of April 6, 1964, Chairman Hartwig informed me that—



Public Law 88-305
88th Congress, S. 1605
May 12, 1964

An Act

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2.z.(2)(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C., 1958 ed., Supp. III, 135(z)(2)(b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

Federal Insecticide, Fungicide, and Rodenticide Act, amendment. 73 Stat. 287. Economic poisons.

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2)(b), deleting the period at the end of section 3.a.(2)(c) and inserting in lieu thereof a semicolon and the word "and", and adding after section 3.a.(2)(c), a new provision reading as follows: "(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act."

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

Registration and labeling.

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States.

Appeal procedures.

78 STAT. 190.
78 STAT. 191.

Advisory committees.

Compensation.

Findings of
fact.

Public hear-
ings.

60 Stat. 241.

Findings and
conclusions.

~~78 STAT. 191.~~

~~78 STAT. 192.~~

61 Stat. 366,
7 USC 135a.

The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3.c.(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to an

advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

Use of data.

Suspension of registration.

61 Stat. 366.
7 USC 135a.

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

"d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below.

Judicial review.
U. S. Court of Appeals.

72 Stat. 941.

Additional evidence.

The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section."

78 STAT. 192.
78 STAT. 193.

Review by U. S. Supreme Court.

Penalties.

SEC. 5. The first sentence of section 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f. (b)) is hereby amended by deleting that part beginning with the second proviso therein down to, but not including, the period at the end thereof.

SEC. 6. Section 3.a.(1) and section 9.a.(1)(b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a.(a)(1), 135g.(a)(1)(b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered".

Effective date.
Termination of
certain exist-
ing registra-
tions.

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment, and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate.

Approved May 12, 1964.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1125 accompanying H. R. 9739 (Comm. on Agriculture).

SENATE REPORT No. 573 (Comm. on Agriculture & Forestry).

CONGRESSIONAL RECORD:

Vol. 109 (1963): Oct. 22, considered and passed Senate.

Vol. 110 (1964): Feb. 17, considered and passed House, amended,
in lieu of H. R. 9739.

Apr. 8, Senate concurred in House amendment
with an amendment.

Apr. 29, House concurred in Senate amendment.

MAY 12, 1964

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
AT THE SIGNING OF S. 1605 - PESTICIDE BILL
IN THE CABINET ROOM

This is a happy moment not only for me but for the American people. By closing loopholes which permitted pesticides to be sold before they were fully tested, this bill safeguards the health and the lives of all of our fellow Americans.

I am sorry that one voice which spoke so often and so eloquently for measures like this is still today -- the voice of Rachael Carson. She would have been proud of this bill and of this moment. We owe much to her and to those who still work for the cause of a safer and healthier America -- Senator Ribicoff, Congressman Rosenthal, Members of the Senate and House Agriculture Committees, the Distinguished Secretary of Agriculture, Mr. Freeman -- all who initiated and worked and supported this legislation through the Congress.

Our concern must always be the health of every one of our fellow Americans. We are taking another step in that direction today, and I am proud to sign this bill in the presence of the Distinguished Speaker and the Majority Leader and other able Members of the Congress.

E N D

